

TRADE CONTRACT

BY AND BETWEEN

NOBLE CONSTRUCTION GROUP, LLC

AS CONSTRUCTION MANAGER

AND

COUNTY-WIDE MASONRY CORP.

AS CONTRACTOR

FOR

TRADE: CONCRETE SUPERSTRUCTURE

PROJECT: 70 Schermerhorn Street, Brooklyn, New York

Noble Project # 17-002

TRADE CONTRACT

THIS AGREEMENT (herein, "Agreement" or "Trade Contract") made and entered into as of March 1, 2018, by and between County-Wide Masonry Corp. with an address at 87 Wolfs Lane, Suite 2F, Pelham, New York 10803 (the "Contractor") and Noble Construction Group, LLC with an address at One Harmon Plaza #1004, Secaucus, New Jersey 07094 (the "Construction Manager"). Contractor and Construction Manager are collectively referred to herein as the "Parties" and individually as a "Party".

WHEREAS, the Construction Manager has made a contract for construction (the "Prime Contract"), dated January 30, 2018, with the Owner, 70 Schermerhorn Owner LLC (the "Owner"), having its principal offices at: c/o Lonicera Partners, LLC, 31 Smith Street, Brooklyn, New York 11201, for the Project described in Article 4.1 below; and

WHEREAS, the Prime Contract provides for the furnishing of certain labor, materials, equipment and services in connection with the scope of construction work set forth therein to be performed at the Project. A copy of the Prime Contract, consisting of the Agreement between Owner and Construction Manager (from which provisions unrelated to this Trade Contract may be redacted) and the other Contract Documents enumerated therein as described in Section 4.1, have been made available to Contractor; and

WHEREAS, the Architect for the Project is: Colberg architecture (the "Architect").

NOW THEREFORE, in consideration of the premises and the mutual promises and agreements herein set forth and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1

PROJECT AND DEFINITIONS

Section 1.1. The Project and the Site.

(a) The project consists of the complete CONCRETE SUPERSTRUCTURE TRADE WORK located at 70 Schermerhorn Street, Brooklyn, New York (the "Site" or the "Project"). The Project is being constructed by the Construction Manager for and under a Contract (the "Prime Contract") with Owner.

(b) The Project is being constructed for a Guaranteed Maximum Price (as defined in Section 9.2 herein).

ARTICLE 2

SCOPE OF WORK

Section 2.1. Scope of Work. The Construction Manager and the Contractor agree that the Contractor shall furnish all labor, supervision, materials, scaffolding, ladders, tools, equipment,

supplies, and incidental materials, etc., necessary for the prosecution and completion of CONCRETE SUPERSTRUCTURE TRADE WORK as described in Rider No. 1 attached hereto, for the Project described in Section 1.1.

Section 2.2. Work.

(a) The "Work" of this Trade Contract shall include the above (Section 2.1) and shall also mean and include all work to be performed and services to be provided by Contractor under this Agreement and the Contract Documents as defined in Article 4, including anything that is incidental and/or necessary thereto, and includes but is not limited to all supplies, materials, labor, equipment, devices, machinery, tools and the direction, supervision, inspection, maintenance, repair, implementation and use of same. With respect to Contractor's scope of responsibility and liability, this Contractor's "Work" is to be interpreted broadly, to include all that is remotely related to or necessary for proper and complete performance of that which Contractor hereby agrees to perform hereunder. Contractor agrees to supply, provide and install all Work in a manner and quality acceptable to Construction Manager, Owner, Architect, the Controlled Inspection Engineer and the Structural Engineer, and conforming with all applicable standards, laws, rules, regulations, ordinances, codes, statutes and good and accepted practices within the industry. All material and installation to be provided as specified in Contract Documents, including the latest approved Project Drawings and Project Specifications, as same may be amended from time to time as provided for herein and under the Prime Contract, and including duly executed and approved Change Orders and Construction Change Directives.

(b) Contractor understands that given the size of this project, there may be one or more other contractors or subcontractors simultaneously providing labor and/or services that are substantially the same or similar to that supplied by this Contractor hereunder, and that it is Contractor's duty to coordinate and cooperate with such trades in the best interests of completing the subject scope of Work and this Project on time and within budget.

ARTICLE 3

CONTRACT PRICE

Section 3.1. Contract Price.

The Construction Manager agrees to pay the Contractor for the performance of the Work the sum of

Three Million Four Hundred Thousand Dollars.....\$3,400,000.00

(the "Contract Price"), including any allowances, alternates and unit pricing if applicable, subject to additions and deductions as provided in the Contract Documents.

ARTICLE 4

CONTRACT DOCUMENTS, PRIORITY, RIGHTS AND RESPONSIBILITIES

Section 4.1. Contract Documents:

(a) The "Contract Documents" consist of the following enumerated documents, all of which are as fully a part of this Trade Contract as if attached hereto or reproduced fully herein:

- (i) This Agreement;
- (ii) The Prime Contract and contract documents enumerated therein or attached thereto;
- (iii) Rider No. 1, Contractor Scope of Work;
- (iv) Exhibit A, Insurance Requirements;
- (v) Exhibit B, Project Drawings and Project Drawing Log dated 02/01/18 (and as such may be duly updated from time to time);
- (vi) Exhibit C, Project Specifications and Project Specifications List dated 01/26/18 (and as such may be duly updated from time to time); Addendum 1 4/4/18
- (vii) Exhibit D, Project Safety and Health Program and Contractors' Project Safety and Health Requirements;
- (viii) Exhibit E, Applications for Payment and Schedule of Values;
- (ix) Exhibit F, Project Schedule;
- (x) Exhibit G, Shop Drawings and Submittal Log;
- (xi) Exhibit H, Partial Waiver of Liens;
- (xii) Exhibit I, Final Waiver of Liens;
- (xiii) Exhibit J, Notice To Contractor re: Affirmative Action/Equal Employment Opportunities Requirements;
- (xiv) Exhibit K, State of New York ST-124 Certificate of Capital Improvement;
- (xv) Exhibit L, Alternates and Unit Pricing (if applicable);
- (xvi) Exhibit M, Penalties for Safety Violations
- (xvii) Any Modifications to this Agreement issued after execution of this Agreement;
- (xviii) Modifications to the Prime Contract whether before or after execution of this Agreement;
- (xix) Additional Documents (if any):

- 1. Exhibit ____, Geotechnical Report dated

(b) All the Contract Documents shall be read together as complementary and the rights and obligations thereunder shall be deemed cumulative. The Construction Manager shall and has made the Contract Documents available to Contractor prior to execution of this Agreement and thereafter shall make them available upon request, but the Construction Manager may charge the Contractor for the reasonable cost of reproduction.

(c) When Work is indicated on the Drawings but is not called for in the other Contract Documents, or is called for in the other Contract Documents but is not indicated on the

Drawings, and the nature of the Work is such that it should be performed by workers employed by this Contractor or if standard building practices would require such Work to be performed by this Contractor, then such Work shall be deemed a part of the Work covered by this Agreement and shall be performed by this Contractor without additional compensation.

(d) Notwithstanding anything mentioned in Drawings and Specifications to the contrary, it is understood and agreed that the Contract Price is predicated on the complete installation of all Work of the subject trade unless specifically excluded elsewhere herein. All Work is to be done in a first-class workmanlike manner to the complete satisfaction of Construction Manager, Architect and Owner. The Work includes any and all items normally required to provide a complete, first-class job in every detail for maximum quality, serviceability and appearance.

(e) Qualifications or exclusions contained in the Contractor's proposal for the Work are not accepted or agreed to unless specifically incorporated in writing into this Trade Contract.

(f) The Contractor represents that it is familiar with the Project and has expertise, capabilities and capacity in the scope of this trade and the Work sufficient to properly and timely complete the Work and satisfy all obligations and requirements set forth herein and in the Contract Documents.

(g) Drawing references are for the Contractor's convenience and shall in no way limit the scope of the Work.

(h) Words used herein that have well known technical or trade meanings shall be construed according to their customary meaning within the building industry operating in the New York City metropolitan area.

(i) The Contractor shall promptly report, in writing to the Owner and Construction Manager, any discovered error, omission, inconsistency or similar defect that may be apparent from Contractor's review of the Contract Documents including the Drawings or Specifications. The Contractor shall cooperate with the Owner and Construction Manager in good faith to resolve such error, omission, inconsistency or defect in a manner so as to avoid any increase in the Contract Price or delay to the progress of the Work.

(j) This Agreement shall not be changed or modified, nor any of its provisions waived unless such change, modification or waiver is in a writing signed by Construction Manager and Contractor.

(k) The Prime Contract shall continue to be a Contract Document and, as such, is incorporated herein and made a part hereof, and Contractor shall continue to be bound by the Prime Contract, notwithstanding any termination, expiration or cancellation of the Prime Contract, or the assignment or reassignment of the Prime Contract by Contractor or Owner.

Section 4.2. Priority of Documents.

(a) This Agreement, the Prime Contract and the other Contract Documents are intended to supplement and complement each other and shall, where possible, be thus

interpreted. If, however, any provision of this Agreement conflicts with a provision of the Prime Contract or any of the other Contract Documents, the terms and conditions that impose the greater duty or greater obligation upon the Contractor shall govern.

(b) If there is a direct conflict between the Drawings and the Specifications or within the Drawings or within the Specifications, then the conflict shall be submitted to the Owner who shall refer the matter to the Architect for a determination whose decision shall be final and binding upon the parties hereto and the Contractor shall proceed with the Work in accordance with such determination.

Section 4.3. Rights and Responsibilities. The Construction Manager and the Contractor are mutually bound by the terms of this Agreement. Subject to the provisions of this Agreement, the parties agree that to the extent that the provisions of the Prime Contract pertain to Work (as defined under Section 2.2 hereof), the Contractor shall assume toward and for benefit of the Construction Manager all obligations and responsibilities which the Construction Manager, under the Prime Contract and Contract Documents, assumes toward the Owner and the Architect and others, including but not limited to: Indemnification (Prime Contract: Article XVIII); Insurance (Prime Contract: Article XII); Assignment (Prime Contract: Article XV); Warranty and Guaranty obligations; Payment (Prime Contract: Article XI); Contractor compliance and obligations; Liens (Prime Contract: Article XIII); Changes (Prime Contract: Article X); Claims and Notice Requirements (Prime Contract: Article XXII and XXIII); Disputes and Dispute Resolution (Prime Contract: Article XXII and XXIII); Default and Termination (Prime Contract: XIV); and the supplementary provisions, if any, set forth in Section 4.4 below. The Construction Manager shall have the benefit of all rights, remedies and redress against the Contractor and the Contractor's sub-contractors of any tier (herein "Sub-Contractors," each a "Sub-Contractor") that the Owner, under the Prime Contract and Contract Documents, has against the Construction Manager. In the event of any conflict in or between the Prime Contract and this Agreement or the Contract Documents, the terms and conditions that impose the greater duty or greater obligation upon the Contractor shall govern.

Section 4.4. Supplementary Prime Contract Provisions. In addition to the Prime Contract Sections set forth in Section 4.3 above, the following provisions of the Prime Contract are also expressly incorporated into this Trade Contract and made a part hereof (if any):

Section/Exhibit

ARTICLE 5

ADMINISTRATION

Section 5.1. Construction Manager

The Owner has employed Construction Manager to administer, manage and coordinate the Construction Work of the Project, including reviewing and approving requisitions from Contractor.

Section 5.2. Architect.

The Owner has employed the following firms as Architect for the Project and who has in turn employed various engineers and other consultants (collectively the "Architect"):

Colberg Architecture
76 9th Avenue #30186
New York, New York 10011

Section 5.3. Responsibility for Construction Means and Methods, Etc.

The Contractor, its Sub-Contractors (which includes subcontractors of all tiers) and its suppliers shall be solely responsible for (a) construction means, methods and techniques, (b) establishment of a Site Safety Program that adheres to the Project Safety Program referred to elsewhere herein, (c) all procedures and precautions necessary to comply with the Safety Programs, the Federal Occupational Safety and Health Act of 1970 ("OSHA") standards, and all applicable Federal, State and City safety and health-related codes, rules and regulations, and (d) carrying out the Work in accordance with the Contract Documents.

ARTICLE 6

CONTRACTOR'S RESPONSIBILITIES

Section 6.1. Adherence to Contract Documents and Financial Status.

The Contractor shall perform the Work in strict accordance with the Contract Documents and Contractor represents and guarantees that it has sufficient available skilled and qualified personnel to carry out the Work and the terms of this Trade Contract. Contractor further represents that it is financially sound and has the financial capacity to perform all the Work to the completion of the Project and that it is a bondable company ~~capable of obtaining, on short notice, a bond if required by the Owner or Construction Manager.~~ *N.I.B.*
4.4.18

Section 6.2. Supervision.

(a) The Contractor shall use its best skill and attention for the proper administration, coordination, supervision and superintendence of the Work. The Contractor shall, subject to approval of Construction Manager, select and provide a full-time on-site supervisor for this Project, who shall be present on the Site at all times Work is performed and be responsible for compliance of all phases of and performance of the Work with the Contract Documents and the Project Safety Program. The Contractor shall furnish a competent representative to represent the Contractor for the purpose of receiving notices, orders and instructions. Subject to Construction Manager's approval, the supervisor and the representative referred to in the preceding sentences may be the same person; such persons must be designated by Contractor in written notice to Construction Manager before commencing Work. The Contractor shall also, when called upon by the Construction Manager, report the general progress of the Work at the Site or elsewhere, and shall cause a competent and responsible representative to attend such job meetings as are called by the Construction Manager. The Contractor shall employ an appropriate number of full-

time foremen and assistants, as necessary, who shall be in attendance on the Project during the progress of the Work. The foremen shall be subject to the Construction Manager's reasonable approval and shall not be changed except with the consent of the Construction Manager, unless the foremen prove to be unsatisfactory to the Contractor or cease to be in its employ.

(b) Contractor's Representative. The Contractor shall designate a person, subject to Construction Manager's approval, who shall be the Contractor's authorized representative and who can take action for Contractor and who can accept on Contractor's behalf, the instructions, orders or directions of Construction Manager. The Contractor's representative is _____ (if none listed, Contractor's representative shall be identified by the Contractor in writing prior to commencement of Work, subject to Construction Manager's approval). The Contractor's Representative shall be the primary point of contact for Construction Manager and shall maintain a good working relationship with Construction Manager. If, in the opinion of Construction Manager, the Contractor's Representative is no longer able to fulfill his or her role or his or her continued involvement in that capacity is no longer in the best interests of the Project, then Construction Manager may demand in writing that Contractor appoint a new Contractor's Representative, subject to Construction Manager's approval.

Section 6.3. Labor.

(a) The Contractor shall furnish and maintain an adequate staff and workforce of skilled, competent, experienced, reliable and honest workers on the Project to carry out the Contractor's obligations hereunder in an efficient and timely manner until completion of the Work and shall enforce discipline and order among Contractor's employees and shall not employ on the Project any unfit person or anyone not properly skilled or trained in the task assigned. Contractor shall only employ for this Project and scope of Work, and shall ensure that its Sub-Contractors only employ and use for this Project (and shall include this provision in its agreements with its Sub-Contractors) employees who are legally eligible and authorized to work in this jurisdiction pursuant to the State and Federal Laws, Rules and Regulations, including but not limited to Section 274A of the Immigration and Nationality Act, as amended, and the Immigration Reform and Control Act of 1986.

(b) To the end that Work may not be interrupted by labor disputes, the Contractor shall employ on the Work only such labor as, to the satisfaction of the Construction Manager, will perform their services in harmony with other trades on the Project. Should the Contractor fail to carry out this provision, the Construction Manager shall be at liberty after three (3) days written notice, to terminate the employment of the Contractor and the Construction Manager may, for the purpose of completing the Work, enter upon the premises and take possession in the same manner and upon the same terms and conditions as described in Section 15.1 of this Agreement. Materials manufactured and installed and deliveries made shall be by workmen whose trade affiliations shall not cause strikes or work stoppages on the Project. The Contractor is to be responsible for employing the proper tradesmen. The Contractor is also responsible for taking whatever measures may be necessary to settle any labor disputes and insure job continuity. Should Contractor fail to take expeditious action, this Contractor shall be responsible for any time lost because of delays arising from such disputes.

Section 6.4. Non-Discrimination and Equal Opportunity.

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, gender, age, physical or mental disability, marital status, sexual orientation, affectional preference, national origin, ancestry and veteran or citizenship status. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, religion, gender, age, physical or mental disability, marital status, sexual orientation, affectional preference, national origin, ancestry, and veteran or citizenship status. Such action shall include, but shall not be limited to, the following: employment, job classification, upgrading, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for and quality of training, including apprenticeship.

(b) The Contractor shall (i) comply with all Applicable Laws relating to discriminatory practice and equal employment opportunity, including, without limitation, to the extent applicable, Executive Order No. 50 of the City of New York, Federal Executive Order 11246, New York City Local Law 49 and New York State Executive Law Article 15A, Sections 310-318, participation by Minority Group Members and Women with respect to State Contracts, and (ii) submit the Construction Employment Report required by the City of New York under Executive Order No. 50..

(c) Contractor shall comply with all Federal, State or Local Equal Opportunity or Affirmative Action Programs that are applicable to the Project, including, but not limited to, those referenced in Exhibit K hereto.

Section 6.5. Permits and Legal Requirements.

(a) The Construction Manager shall secure and pay for the Building Permit and this Contractor shall secure, maintain, renew and pay for all other permits, expeditors (if, any) and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work.

(b) The Contractor further agrees that all Work shall be performed in accordance with and all materials furnished by it under this Trade Contract shall comply strictly with OSHA, Department of Labor, local Department of Buildings, B.E.S.T. Squad, Department of Transportation, Metropolitan Transportation Authority, Department of Environmental Protection, Department of Sanitation, NYC Administrative and Industrial Codes, NY Labor Law, and all other applicable laws, local rules and regulations, ordinances, codes, statutes, and orders (all as amended) of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction and which affect the Work hereunder, including, but not limited to Intro 1447 (collectively, "Legal Requirements"), without extra charge or expense.

(c) Without limiting the foregoing, the Contractor agrees to comply with the safety standards established by the Construction Manager and all Legal Requirements, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, at all times during the progress of the Work. When so ordered, the Contractor shall stop any part of the Work which the Construction Manager deems unsafe until corrective

measures satisfactory to the Construction Manager have been taken, and the Contractor agrees that it shall not have or make any claim for damages arising out of such stoppages. Should the Contractor neglect to take such corrective measures, the Construction Manager may do so at the cost and ~~expense of the Contractor~~ and at Construction Manager's discretion, may invoice Contractor directly or may deduct the cost thereof from any payments due or to become due to the Contractor. Failure on the part of the Construction Manager to stop unsafe practices shall in no way relieve the Contractor of its responsibility therefor. The Contractor agrees to defend, indemnify, and save harmless the Construction Manager, Owner and other Indemnitees as defined under this Agreement, from any and all claims, actions, fines and penalties brought or imposed or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including legal fees and disbursements, which the Construction Manager, Owner or any other Indemnatee may sustain or incur in connection therewith.

(d) ~~The Contractor shall be liable for a violation of any such Legal Requirements that in any way are caused by or arising out of the performance of the Work by or any other act or omission of the Contractor or any of its Sub-Contractors, and hereby indemnifies, defends and saves harmless the Construction Manager, Owner and all other Indemnitees (as defined under Section 12.2 hereof) and other persons and entities mentioned or referred to as Additional Insureds in Exhibit A hereof from and against any delay in the schedule for completion of the Work attributable to any such violation or noncompliance by Contractor and any fine or expense, including reasonable attorneys' fees and disbursements, resulting to them by reason of any such violation by the Contractor. The Contractor shall, without additional cost to the Construction Manager, cooperate with the Construction Manager and Owner by, among other things, appearing at any court, administrative or legal proceedings or hearings held in connection with alleged violations of such Legal Requirements.~~ *NO Liquidated Damages 4-4-18*

(e) The cost of correction, whether incurred by Contractor, ~~or at Construction Manager's sole discretion~~, incurred through correction by others on behalf of Contractor, and the cost of any fines, penalties, assessments or fees resulting from Contractor's failure to adhere to or any violation of a Legal Requirement in any way caused by Contractor, shall be assessed against and charged to Contractor by Construction Manager, in addition to any other remedy or recourse that Construction Manager may have under Section 6.5(g) hereof. Contractor shall also pay Construction Manager for the legal fees and expenses incurred by Construction Manager in responding to any Notice of Violation issued by the Environmental Control Board ("ECB") and any fines assessed by ECB for a safety or other violation of the applicable Administrative Code, Construction Code or other rules or regulations applicable to the Project, arising from Contractor's operations under this Trade Contract.

(f) In addition to the above and any other remedy available under this Agreement or any other Contract Document, any violation of Legal Requirements by Contractor or its Sub-Contractors, including safety violations (OSHA, local rules and regulations, and the applicable Project Safety and Health Programs), site cleanliness, improper or failure to make use of personal protection equipment and other safety devices (helmets, safety harnesses, lanyards, tie-offs etc.), ~~may also subject Contractor to assessment of a \$500 per offense, as determined and at the discretion of Construction Manager.~~

(g) Contractor, and its performance bond surety, if any, shall defend, hold harmless and indemnify to the greatest extent permitted by law, the Construction Manager, Owner and any Indemnites described or required under this Agreement, from any loss, liability, damages and expense, including attorney fees and other legal costs, arising from Contractor's failure to pay its workers, or Sub-Contractor's failure to pay their workers, in accordance with the applicable labor or employment laws and/or labor compliance requirements set forth in the Subcontract Documents. In the event Construction Manager receives notice from the Owner, Department of Labor, NY Attorney General's office, or any other public agency with jurisdiction regarding an alleged violation of Contractor or its Sub-Contractor of the aforesaid requirements or any other Legal Requirements, or Construction Manager receives a complaint from any employee of Contractor and/or a Sub-Contractor that the aforesaid requirements are not being complied with by Contractor, Construction Manager shall have the right to withhold payment from Contractor, in an amount determined by Construction Manager, to be sufficient to protect itself from potential liability for such violation or complaint, until such time as Contractor provides other adequate security, as determined by Construction Manager, against any such potential liability. In the event monies are withheld from Construction Manager's payments (holdback) on account of an alleged violation by Contractor or its Sub-Contractor of the aforesaid requirements and the amounts currently earned and payable to Contractor are insufficient to reimburse and hold harmless Construction Manager for such holdback, Construction Manager shall have the right to demand that Contractor deposit with Construction Manager an amount sufficient to hold harmless Contractor from the holdback of payment from Construction Manager and for any loss, liability and expense arising from such alleged violations. Contractor's failure to satisfy a demand for such deposit within five (5) days of notice from Construction Manager to Contractor and its performance bond surety shall constitute a material breach and default of this Trade Contract. In such event, Construction Manager may exercise any remedy for default under this Trade Contract, and the performance bond. Contractor also agrees to pay any fines assessed against the Construction Manager on account of labor or employment law violations by the Contractor or his Sub-Contractors.

Section 6.6. Cutting, Fitting, Patching, Etc.

The Contractor shall do all cutting, fitting, patching and protection of its Work that may be required to make its several parts come together properly and to fit it to receive or be received by the work of other trades shown in or reasonably implied by the Contract Documents, and as otherwise set forth in Rider 1. The requirement to cut, fit or patch shall be determined by Contractor, provided however, that structural elements of the Project shall not be cut, patched or otherwise altered or repaired without prior authorization of the Architect.

Section 6.7. Taxes.

The Contractor agrees to pay and hereby assumes full and exclusive liability for the payment of any and all contributions or taxes imposed by the laws of the United States of America or by the laws of any state or city and which are measured by the wages, salaries, or other remuneration paid to persons employed by the Contractor on the Work to be performed hereunder or by material and equipment cost therefor. If requested by the Construction Manager, the Contractor shall furnish the Construction Manager such payroll information or employment records as may be necessary to enable the Construction Manager to comply with any law

imposing such contributions or taxes, and the Contractor agrees to reimburse (whether by direct payment to Construction Manager or as a backcharge against Contractor, at Construction Manager's discretion) the Construction Manager for the entire amount of contributions, taxes or penalties that the Construction Manager may be required to pay because of the failure of the Contractor to furnish such information or records, or because of the failure of the Contractor to pay such contributions or taxes. The Contract Price excludes and the Contractor shall be liable for the payment of all sales, use or other taxes of whatever nature levied or assessed against the Construction Manager, the Owner or the Contractor arising out of the Work and the furnishing or installing by the Contractor hereunder of any kind of materials, supplies or equipment.

Section 6.8. Surety Bonds And Subcontractor Default Insurance.

(a) As a condition of this Trade Contract, Construction Manager or Owner reserves at all times the right to require the Contractor to furnish a Performance Bond and a separate Payment Bond, which Payment Bond shall provide a direct right of action against the surety by a claimant. Each such Bond shall be in the sum equal to 100% of the Contract Price, shall be in form and substance satisfactory to the Construction Manager, Owner and Owner's Lender and shall be underwritten by a surety company acceptable to Construction Manager, Owner and Owner's Lender. When required, the Contractor shall furnish to Construction Manager (Attention: Legal Department) an original of each such Bond prior to commencing any work at the project. Failure to furnish such bonds within five (5) business days from demand shall constitute a material default hereunder.

N.I.B. 4-4-18

(b) As a condition of this Trade Contract, should Owner and/or Construction Manager, in their sole discretion, desire to enroll Contractor in a Subcontractor Default Insurance Program, the Owner and/or Construction Manager may require this Contractor to furnish a Qualification Form and required annexed submittals including but not limited to financial statements, Insurance company verification of Experience Modification Rating ("EMR") and a Surety Reference Letter. Failure to furnish such documents or cooperate with Construction Manager, the insurance carrier and/or Owner in connection with Contractor's enrollment and participation in such Subcontractor Default Insurance Program shall constitute a material default hereunder and result in withholding of the Contractor's payment(s) until such documents and/or cooperation are received.

Section 6.9. Handling and Hoisting of Tools, Equipment and Materials.

(a) The Contractor is responsible for the handling and distribution of its own tools, equipment and materials. Contractor shall confine its tools, equipment and materials and its operations to areas permitted by Legal Requirements or as directed by the Construction Manager.

(b) The Contractor shall organize and coordinate, well in advance of the time required on the Project, the procurement and delivery of all necessary materials, supplies and equipment so that they will be available at the Project as needed for timely completion of the Work.

(c) The Construction Manager will make available through the hoisting contract a material and personnel hoist ("the hoisting facilities") at the Project for the use of all Contractors

on the Project on a reservation basis and, ~~unless provided otherwise in Rider No. 1 hereto, at a cost of \$400 per hour regular time and \$600 per hour overtime, or portion thereof; provided, however, there will be a minimum charge of \$400 for any use during regular time and \$600 for any use during overtime.~~ The Contractor shall make all arrangements for the use of this hoist with Construction Manager's superintendent at least twenty-four hours in advance. The Contractor shall satisfy itself as to the adequacy, size, carrying capacity and projected period of availability of the hoisting facilities for use, as well as the location of the hoisting facilities installed or planned for the Project. Neither the Construction Manager nor the Owner can guarantee that the hoisting facilities will be available for use whenever or wherever Contractor desires. No personnel shall be permitted to utilize any material hoists. If the Contractor shall use any scaffold, derrick, material hoist, personnel hoist or other tools and equipment furnished by the Construction Manager, other Contractors or Owner, Contractor shall satisfy itself as to the safety of said scaffold, derrick, material hoist, personnel hoist or other tools and equipment before using the same and shall be fully responsible for the safety, inspection, maintenance and repair thereof to the same extent as if such scaffold, derrick, material hoist, personnel hoist or other tools and equipment were owned by and in the sole control of the Contractor.

(d) The Contractor may decide not to rent the available hoisting equipment and elect to use rope hoists or other methods. If it does so, any damage caused through the use of its own method will be charged to Contractor. If Contractor installs a rope hoist it must remove same when same is not in use so that other Contractors will not use same without authorization. The Contractor shall notify the Construction Manager's superintendent of the location at which it intends to use the rope hoist or other methods. In the use of ropes or other methods of hoisting, the Contractor shall so conduct its operations so as not to interfere with or cause injury to other trades and shall move same from location to location, if required, in order to enable the other trades to work expeditiously, the cost of any such moving to be the Contractor's sole responsibility.

(e) There shall be no ~~extensions of time permitted~~ or extras or costs paid by the Construction Manager or Owner for walk-up time, ~~lost time~~ or delivery or trucking charges that may be incurred as a result of personnel hoist, material hoist or vertical transportation breakdowns. The Contractor and its employees must continue to work and walk to the place of the Work, if necessary, during any personnel hoist, material hoist or vertical transportation breakdown, it being acknowledged that such breakdowns occur from time to time on all construction sites.

(f) ~~If the Contractor reserves any hoist, but does not use it, Contractor will be charged for the reserved time at the above noted rates whether or not free hoisting is provided to Contractor pursuant to Rider No. 1 hereto.~~ Hoist is No Charge 4.4.18

(g) Contractor must provide sufficient manpower so as to make maximum use of the hoist whenever it is available, and shall do so at no additional cost to Construction Manager or Owner.

Section 6.10. Layout.

One North/South axis line and one East/West axis line and one benchmark shall be established by others at each level. All subsequent layout on the floors shall be performed by the Contractor who shall be solely responsible for establishing and maintain the layout, line and grade tolerances required. The Contractor shall perform all engineering and layout for its own Work, and shall undertake to obtain (and notify Construction Manager in writing) any additional data or information that may be required in order for Contractor to properly and fully perform its layout work, including correlating and fitting same with the work of others. If axis lines are provided by others, the Contractor shall verify all axis lines prior to use and shall notify Construction Manager of any discrepancies. Contractor shall be solely responsible for the accuracy of the Contractor's Work and layout for same, and shall be responsible for any and all costs resulting from any failure of Contractor to properly and accurately layout its Work, and Construction Manager may withhold from payment to Contractor such amounts as Construction Manager determines, in its sole discretion, to be sufficient to protect against and secure payment of such costs or claims arising therefrom.

Section 6.11. Temporary Facilities.

(a) The Contractor shall place and relocate its field offices and shanties when and where directed by the Construction Manager and provide all necessary facilities for its workers. It is understood that this Contractor is responsible for the acquisition, maintenance and subsequent removal of all utility, sprinkler and telephone services required for its field offices and shanties. Each structure Contractor maintains must be of fire-resistant construction if placed inside the Project and must contain a minimum of one (1) 20 lb. dry ABC Fire Extinguisher.

(b) Temporary light and power for small hand tools will be furnished and maintained by the electrical Contractor only during the normal working hours of the trades and for work performed on overtime which has been ordered and approved as overtime work by the Construction Manager, subject to the provisions of Section 7.4.

Section 6.12. Cleaning and Rubbish Removal.

The Contractor shall, on a daily basis and at no additional cost, organize and safely stack and secure all of its materials as directed by Construction Manager's superintendent, and shall clear all rubbish and debris created by its operations and collect same in a central location on each floor or in a container provided by the Construction Manager or as otherwise directed by the Construction Manager's superintendent. Contractor shall have sole responsibility with respect to the Work, to ensure that no equipment, rubbish, material or debris shall be kept or left at or near an opening in or leading edge of the structure or anywhere that may create a falling or tripping hazard. If Construction Manager uncovers or learns of Contractor's failure to organize or make safe any of its equipment or materials, or clear and collect rubbish created by its operations, Construction Manager may do so upon notice to the Contractor (except where such conditions present an immediate safety hazard or exigent circumstances otherwise prevent such advance notice, then notice shall be given within reasonable time after taking such action) and all cost and expense of performing such Work shall be charged to the Contractor's account. In the event of a dispute between the Contractor and other trade contractors or subcontractors on the

Site as to responsibility for cleaning up as required under this Section, the Construction Manager may clean-up and charge the cost thereof to the Contractors responsible therefor as the Construction Manager shall reasonably determine to be fair and equitable, which shall in no way be construed as relieving Contractor of its obligations under this Agreement or any Contract Documents identified herein.

Section 6.13. Substitutions.

Requests for substitutions of equipment, materials or processes other than those specified must be approved in advance in writing by Architect, Construction Manager and Owner and the Contractor will furnish with Contractor's request for approval of a proposed substitution such drawings, specifications, samples, performance data and other information as may be required by the Prime Contract or otherwise to assist the Architect, Construction Manager and the Owner in determining whether the proposed substitution is acceptable. All shop drawings, samples and product data submitted for approval by Contractor that contain substitutions must indicate all substitutes with bold lettering stating "Request for Approval of Substitution". Substituted materials, equipment or processes not previously approved in writing shall not be installed, except at Contractor's sole and complete risk.

Section 6.14. Site Conditions.

(a) By executing this Contract, the Contractor represents that it has visited the Site, familiarized itself with the local conditions under which the Work is to be performed, as well as site access and delivery of material, has correlated its observations with the requirements of the Contract Documents and understands that the Work may be done in a congested area and in a climate that regularly experiences winter weather, including significant snow, ice, wind and temperatures well below freezing, and has calculated its price and time schedule accordingly, and shall not make any claim for adjustment to Contract Time or the Contract Price on account of such conditions other than as permitted by Section 7.2 herein. Material deliveries are to be promptly coordinated with Construction Manager so as not to interfere with or delay any work (including the Contractor's Work or the work of others) or operations at the Project. Contractor shall obtain Construction Manager's approval of any proposed location of materials to be stored on Site prior to delivery of such materials on Site, as well as proposed methods of protecting and safeguarding such materials until installation. The Contractor shall confine operations at the Project to areas permitted by applicable Legal Requirements, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with any materials or equipment. The Contractor shall coordinate all of the Contractor's operations with and secure approval from the Construction Manager before using any portion of the Site.

(b) Furthermore, by executing this Trade Contract, Contractor affirms and represents that it has fully reviewed the Construction Documents, including surveys, geotechnical and environmental reports, if any (Exhibit __), and has inspected the Project Site to its satisfaction and has fully investigated, identified, discovered and become familiar with all conditions at or around the Site, whether latent or not, and whether existing above, at or below grade level, and all other existing conditions likely to impact any part of the Work, and that Contractor has accepted and taken these conditions into consideration and already accounted for the impact of same in the original Contract Time and Contract Price set forth herein.

(c) Contractor represents that it is fully qualified to perform the Work, and acknowledges that, prior to the execution of this Trade Contract, it has (a) by its own independent investigation ascertained (i) the Work required by this Trade Contract, (ii) the conditions involved in performing the Work, and (iii) the obligations of this Trade Contract and the Contract Documents; and (b) verified all information furnished by Construction Manager, Owner or others, having satisfied itself as to the completeness, correctness and accuracy of that information. Any failure by Contractor to independently investigate and become fully informed will not relieve Contractor from its responsibilities hereunder.

(d) If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Construction Manager or anyone directly employed by Construction Manager (this does not include the Contractor), the Construction Manager shall, prior to harmful exposure of the Contractor's employees to such substance, provide the material safety data sheet ("MSDS") for same to the Contractor providing sufficient detail and time to permit the Contractor's compliance with such laws.

(e) If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, the Contractor's Sub-Contractors or anyone directly or indirectly employed by them, the Contractor shall, prior to harmful exposure of any employees on the site to such substance, provide the MSDS for same to the Construction Manager, providing sufficient detail and time to permit compliance with such laws by the Construction Manager, other subcontractors and other employers on the site.

(f) If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Construction Manager in writing. When the material or substance has been rendered harmless, the Contractor's Work in the affected area shall resume upon written agreement of the Construction Manager and Contractor. As determined in the Construction Manager's discretion, subject to the requirements of and only if and to the extent permitted by the Prime Contract, the Contract Time may be extended appropriately and the Contract Price may be increased in the amount of the Contractor's reasonable additional costs of demobilization, delay and remobilization, incurred directly and solely as a result therefrom, which adjustments shall be accomplished as provided in Article 9 of this Agreement.

(g) The Contractor shall indemnify the Construction Manager for the cost and expense the Construction Manager incurs: (1) for remediation of a material or substance brought to the site and negligently handled by the Contractor; (2) for the exacerbation by Contractor of any pre-existing condition; and, (2) for any failure by the Contractor to perform its obligations under Section 6.14(f), except to the extent that the cost and expense are due to the Construction Manager's fault or negligence.

(h) Without limiting the foregoing, the Contractor agrees that the prevention of accidents to workmen engaged upon or in the vicinity of the Work is the responsibility of Contractor.

Section 6.15. Reports, Schedules, Etc.

(a) The Contractor shall provide within ten (10) days of request from Construction Manager a proposed schedule of submission of shop drawings (with appropriate cross references to applicable sections of the specifications) and a proposed schedule of deliveries of materials to the Project with periodic (at least one per month) update of the status of progress of such shop drawings and material deliveries within two (2) days of request by the Construction Manager.

(b) The Contractor shall, each morning upon the commencement of Work each day, provide a written report (in a form approved by the Construction Manager) to the Construction Manager stating: the number of workers, the description of Work, the hours worked by each worker, and the area of Site or floors and equipment on the Project.

(c) The Contractor shall be responsible for the preparation and cost of any affidavit or instrument or supporting data regarding the Work to be performed hereunder and which is required for the issuance of Temporary or Permanent Certificate of Occupancy or for compliance with any requirements of any governmental authority having jurisdiction.

(d) Whenever required by the Construction Manager, it shall be the duty of the Contractor to file with the Construction Manager, without charge and within five (5) days of written request, a verified statement, in a form satisfactory to the Construction Manager, certifying the amounts then due and owing for labor and materials furnished under the terms of this Contract and setting forth therein the Sub-Contractors or suppliers who remain unpaid and the amounts due to each, and state whether any dispute exists with respect thereto (setting forth the nature and amount of the dispute).

Section 6.16. Coordination with Other Trades.

(a) Included is the complete coordination of this Work with the work of other trades. The Contractor shall its Work with the work of other contractors to avoid delay and in such manner as the Construction Manager shall direct. The Contractor shall afford other Contractors reasonable opportunity for the installation, execution and storage of their respective Work and materials. Contractor (including Contractor's Representative, and such other employees of Contractor and its Sub-Contractors as Construction Manager may direct) shall attend all coordination meetings as scheduled by the Construction Manager. Contractor shall perform all preparation of its Work required in order to receive the work of other trades. Contractor shall advise other Contractors of any preparation of its work required in order to receive the work of other trades. Contractor shall advise other Contractors of any preparation in their work required for its Work and shall provide those Contractors with location plans and items to be built-in to their work in a timely manner.

(b) If the Construction Manager shall determine that the Contractor is failing to coordinate its Work with the work of other Contractors as directed, the Construction Manager may upon written notice to the Contractor:

- (i) withhold any payment otherwise due hereunder until such directions are complied with by the Contractor;

- (ii) direct others to perform portions of this Contract and charge the cost of such work to the Contract Price; or
- (iii) terminate any and all portions of this Contract for Contractor's failure to perform in accordance with this Contract pursuant to Section 15.2.

Section 6.17. Damaged Materials and Work.

Material which has become damaged in any way during storage and delivery shall not be used and shall be replaced by this Contractor at no additional cost. The Contractor must protect all of its materials stored on the Project Site prior to installation and take proper precautions to avoid accidental damage by other trades or the elements. The Owner and Construction Manager will not be responsible for any loss of or any damages to any of this Contractor's tools, equipment or stored materials. Any Work performed by others that is damaged by this Contractor or anyone for whom Contractor may be liable, as determined by Construction Manager in its sole discretion, shall be the responsibility of this Contractor to replace at no additional cost to the Construction Manager or Owner. Completed work of this Contractor shall be free of dents, tool marks, warpage, buckling, open joints, and other defects.

Section 6.18. Quality of Workmanship and Materials.

The Contractor shall perform the Work strictly in accordance with the best modern construction practices and shall use only the highest standard of workmanship and new materials of best quality, subject to the specific requirements of the Drawings and Specifications.

Section 6.19. Project Meetings.

The Contractor shall attend and participate in all regular progress meetings and special job meetings called by the Construction Manager. The Contractor's Project Safety Representative and Safety Manager shall attend all regular and specially scheduled safety meetings.

ARTICLE 7

PROJECT SCHEDULE AND COMPLETION OF THE WORK

Section 7.1. Schedule and Time for Completion of the Contract Work.

(a) It is understood and agreed that time is of the essence in the commencement, prosecution and completion of the Work. The Contractor shall and will proceed with the said Work and every part and detail thereof in a prompt and diligent manner and shall and will do the several parts thereof at such times and in such order as Construction Manager may direct. The Contractor shall and will wholly finish the said Work according to the Contract Documents and as required in order to maintain the progress of construction of the Project and in accordance with the time schedules, starting dates and completion dates, if any, set forth in Rider No. 1 hereto, except that the Contractor's time for completion as hereinbefore set forth shall be

extended only by reason of any delay resulting from Excusable Delay as provided in Section 7.2(c) herein.

(b) The "Contract Time" is the duration or period of time (including authorized adjustments that are approved in writing signed by Construction Manager and Owner) allotted for achieving substantial completion of the Work, which Contract Time shall be as set forth in the Contract Documents, except that where the duration of the Work or date for substantial completion of the Work has been expressly set forth in a subsequent Contract Schedule submitted by Contractor and duly approved by in accordance with Section 7.1(d) herein, then that shall dictate the applicable Contract Time. The Contractor's "Date of Commencement" is the date from which the Contract Time is measured. The Date of Commencement for this Trade Contract Work shall be the date of this Agreement as first written above, unless a Notice to Proceed is issued by the Construction Manager, in which case the Date of Commencement shall be the date set forth in the Notice to Proceed. As a precondition to achieving substantial completion of all of the Work, and except to the extent Construction Manager exercises its discretion in writing to accept substantial completion of part of the Work, Contractor must deliver all Temporary Certificates of Occupancy required for all of its Work. Contractor shall notify Construction Manager when it believes it has achieved substantial completion, so that Construction Manager and Architect can perform an inspection of the Work to verify substantial completion and prepare and submit to Contractor a punch list identifying all remaining work to be completed or corrected.

(c) If applicable, during the Contract Time and as part of any Contract Schedule to be submitted by Contractor, the following milestones events shall be achieved by the corresponding milestone dates set forth below or in Rider No. 1:

(d) As soon as practicable after executing this Agreement (but in no event more than ten (10) calendar days), the Contractor shall prepare and submit to Construction Manager for approval, a Contract Schedule for the performance of the Contractor's Work. The Contract Schedule submitted by Contractor shall be generated using the critical path method and shall set forth all customary detail and data with respect to the Work, including commencement dates and durations for each part of the Work, milestone dates, certificate of occupancy dates, and date for substantial completion of the whole of the Work, and shall take into account and be coordinated with the overall schedule of the Project, all of which being subject to approval by Construction Manager. The Contract Schedule shall include allowances for periods of time required for the Construction Manager's and Owner's review, for the performance of the Construction Manager's and Owner's consultants, and for review and approval of submissions by authorities having jurisdiction over the Project. Once approved by the Construction Manager, time limits established by the Contract Schedule shall not be exceeded by Contractor, except for and to the extent of an Excusable Delay (as defined under Section 7.2(c)) or such other reason as Construction Manager may determine in its sole discretion. Upon the written approval by Construction Manager of such Contract Schedule, same shall be deemed to be a Contract Document hereof.

(e) The Contractor agrees to have its materials and manufactured products ready so as to begin work at the building within three days from the time of notification by the Construction Manager.

Section 7.2. Delays, Damages and Extensions of Time.

(a) The Contractor shall provide adequate manpower and equipment and materials to keep up with the progress of the job. It is understood that Contractor shall perform the Work during normal working hours except as may be provided otherwise in Rider No. 1. However, Contractor will work overtime at its own expense when its manpower is inadequate to keep up with the progress of the job. ~~All costs of all standby trades will be charged to this Contractor when such overtime is required.~~ 4-4-18 AJ

(b) The Contractor shall not cause any unnecessary hindrance or delay to other contractors on the Project. Should any other contractor having or who shall hereafter have a Contract with the Owner or Construction Manager for the performance of work upon the Site or the Project sustain any damage through any act or omission of the Contractor, ~~the Contractor agrees to reimburse such other contractor for all such damages and to indemnify and hold the Owner and the Construction Manager harmless from all such claims.~~ No Liquidated Damages 4-4-18 AJ

(c) Excusable Delay. Except where the Prime Contract has specific requirements at variance with the foregoing, in which case the requirements of the Prime Contract shall govern, and subject to all requirements and restrictions set forth under this Section 7.2(c), the Contractor may be entitled claim "Excusable Delay" for: acts of God (such as tornado, hurricane, tidal or flood from bodies of water, etc.); Unusually Extreme Weather Condition (as defined under Section 10.4(b)); previously undisclosed hazardous material on site requiring abatement or removal prior to continuation of work (except where in any way exacerbated by Contractor); any delay directly and solely attributed to the improper act, improper omissions to act, or failures to timely act by Construction Manager for which Contractor shall advise Construction Manager in writing in a timely manner so as to prevent or mitigate to the greatest extent possible, such delay; riots, insurrections, or civil unrest; embargos; or, sabotage; but an Excusable Delay shall only be claimed where and to the extent a reasonably prudent Contractor under similar circumstances could not have anticipated and could not have further mitigated the delay arising out of or in connection the event being claimed, and no Excusable Delay may be claimed where the event or resulting delay is in any way concurrent with or arises in any way or measure out of an act or omission of Contractor, its Sub-Contractor, or anyone for whom any of them is liable or responsible. Should the Work be obstructed or delayed by Excusable Delay, Contractor shall not be entitled to make any claim for damages or costs incurred by reason thereof, but shall, as Contractor's sole remedy for such Excusable Delay and within no more than three (3) days after the event giving rise to such claim, be entitled to submit for review and approval by Construction Manager, a written claim for same in accordance with the notice of claim provisions herein seeking a time extension commensurate with the Excusable Delay, so long as and to the limited extent that the alleged delay is demonstrated in and by such notice of claim to have actually impacted a critical path item referable to the Work. Regardless of the cause or type of delay being claimed, it is understood that absolutely no extension of time for Contractor's Work shall be granted or valid for or in connection with any delay claim: (1) unless the delay is shown to impact the critical path or a designated milestone; and, (2) until Construction Manager has first

obtained approval from Owner for such an extension of time under the Prime Contract. In addition, under no circumstances shall Contractor be entitled to claim or receive time extension for any concurrent delay or other delay that arises in any way or measure out of an act or omission of Contractor, its Sub-Contractor, or anyone for whom any of them are liable or responsible.

(d) The Contractor acknowledges that this Project may be constructed on a "fast-track" basis and that Contractor may be directed by Construction Manager to perform out-of-sequence Work, including but not limited to performing or temporarily omitting all or some Work on any floor or area at different times and intervals, as deemed necessary to maintain the overall Project Schedule and that Contractor shall proceed as directed in this regard and at no additional cost. The Contractor shall furnish first class, professional and efficient Work and use its best efforts, skill and judgment to complete its Work in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner and Construction Manager and consistent with "fast-track" construction, the progress schedule and the Contract Documents.

(e) If the Contractor or any of its Sub-Contractors or suppliers shall delay the progress of the Work or fail to coordinate its Work with the work of the other Contractors and, as a result thereof, the Architect, Construction Manager or Owner shall incur damages, including ~~liquidated damages (where applicable), the Contractor shall be responsible for same,~~ including payment or reimbursement of any such damages incurred, and shall indemnify and hold harmless the Architect, Construction Manager and Owner on account of any such damages. *NO Liquidated Damages 4-4-18 AD*

(f) If Contractor's Work, in Construction Manager's opinion, has fallen behind or is in danger of falling behind the applicable approved schedule for the Work, Construction Manager may direct Contractor to take extraordinary measures to speed up the Work, including but not limited to directing Contractor to work overtime, without additional cost to Construction Manager or Owner.

(g) Punch-list work shall be performed by Contractor only at times as will not unreasonably interfere with the use or occupancy of the Project or the Work in place.

Section 7.3. Scheduling of the Project.

(a) The planning and scheduling of this Project will be performed and prepared by the Construction Manager and may be programmed using the Critical Path Method. The Contractor agrees to furnish to the Construction Manager such information relating to sequence of operations, manpower availability, and work schedules as will enable proper planning and scheduling of the Project including, without limitation, bar charts or network diagrams, and other details pertaining to manpower, material deliveries and equipment which impact the progress of the Work. The Contractor agrees that it shall arrange and perform its Work in accordance with the schedule for the Project.

(b) A representative of the Contractor shall meet with the Construction Manager and shall furnish to the Construction Manager, from time to time when requested, information necessary for such re-evaluating and updating the schedule for the Project, and, if applicable,

information in regard to the Contractor's proposed effort to overcome any incurred delays. The form of such information shall be as required by the Construction Manager. In addition to the foregoing, the Construction Manager shall at all times have the right to request updates as to information regarding Contractor's scheduled performance of the Work or portions thereof and the Contractor shall furnish the same to the Construction Manager within thirty-six (36) hours of the time of such request.

(c) The Contractor is required to consult with and fully cooperate with other Contractors, as necessary, in order to maintain the schedule and also in regard to any changes which may be required in the Schedule. Any possible means of shortening the schedule, at no additional cost, shall be brought to the attention of the Construction Manager and the Owner.

Section 7.4. Overtime.

The Contractor shall work overtime as directed by the Construction Manager and the Construction Manager shall have the right to expedite the Work, even out of sequence; and, provided the Contractor is (i) in the good faith judgment of Construction Manager not behind in the Work and (ii) not otherwise in default in any of the provisions of the Contract, the Construction Manager shall reimburse the Contractor for the actual additional wages over and above straight time rates determined at premium rates actually paid by the Contractor and approved by the Construction Manager for such overtime for personnel which have been approved by the Construction Manager, plus taxes imposed by law on and fringe benefits and insurance applicable to such additional wages. The Contractor shall not be entitled to any payment on account of overhead or profit with respect to such additional wages, fringe benefits and insurance. Time slips covering said additional wages must be checked and approved by the Construction Manager's superintendent at the Project on a daily basis. If, however, the Contractor is, in Construction Manager's good faith judgment, behind in the Work or, in Construction Manager's good faith judgment, is delaying the progress of the Work necessary to complete the Project in accordance with the scheduled dates of completion then, if requested by the Construction Manager, the Contractor shall work such overtime hours or days with such additional personnel as may be necessary in the Construction Manager's opinion to either meet the scheduled dates or otherwise keep abreast with the general progress of the Work at the Project and the cost incurred on account of such overtime (including the cost of stand-by trades) shall be borne entirely by the Contractor. Any refusal by the Contractor to commence and perform such overtime work shall constitute a default hereunder.

Section 7.5. Expediting.

(a) Work on procuring and furnishing all materials and equipment required to be furnished by the Contractor shall be started at once so that the Contractor may commence deliveries and start the Work at the Project upon receipt of notice from the Construction Manager. Deliveries of all such materials and equipment to the Project shall be made at such times (including overtime days or hours if necessary) so as to avoid delays to the Project.

N.I.B 4-4-18 AD

(b) The Contractor shall cooperate and direct its suppliers to cooperate in furnishing information to the Owner and Construction Manager regarding deliveries and production and in connection with the expediting of the Project pursuant to this Section.

Section 7.6. Use and Occupancy of Project Prior to Completion.

(a) Occupancy of and use by the Owner of the Project, or parts thereof, or anyone in occupancy under or through the Owner, shall not be construed as acceptance of the Work; shall not relieve the Contractor from any obligation of performing all of the Work required by the Contract but not completed at the time of occupancy; and, shall not constitute a waiver of any claims which Construction Manager may have against the Contractor under this Contract of the Contract Documents, all of which are preserved.

ARTICLE 8

INSPECTION, TESTING AND CORRECTION OF THE WORK

Section 8.1. Inspection and Correction of the Work.

The Contractor shall provide, both in the shops and at the Site, sufficient safe and proper facilities at all times for the inspection of the Work by the Construction Manager, the Owner, the Architect and the representatives of any lending institution which shall make a building loan to the Owner, or their authorized representatives. The Contractor shall, within twenty-four hours after receiving written notice from the Construction Manager, the Owner or the Architect, at its own cost and expense, proceed to remove from the Site or Project all materials rejected by the Construction Manager, the Owner or the Architect, as not complying with the Contract Documents, whether worked or unworked, and shall take down all portions of the Work which the Construction Manager, the Owner or the Architect shall, by like written notice, reject as unsound or improper or as in any way failing to conform to the Contract Documents. Work done or materials furnished by the Contractor and not approved by the Construction Manager, the Owner or the Architect will not be accepted. Moreover, it is understood that payment for nonconforming Work shall not constitute acceptance or approval of the Work. The Contractor shall promptly correct all Work rejected as defective or as failing to conform to the Contract Documents, whether observed before or after substantial completion of the Project and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected work, ~~including compensation for the Architect's, Construction Manager's and the Owner's other consultants' additional services made necessary thereby.~~ The Contractor shall not be relieved from the Contractor's obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner or the Architect in their administration of this Contract or by any inspections, tests or approvals required of or performed by others.

Section 8.2. Uncovering of the Work.

(a) If any portion of the Work should be covered contrary to the request of the Architect, Construction Manager or the Owner or the requirements specifically expressed in the Contract Documents, Contractor must, if required in writing by the Architect, the Construction Manager or Owner, uncover such Work for observation and same shall be replaced at the Contractor's sole cost and expense.

(b) If any other portion of the Work has been covered which the Architect, Construction Manager or Owner has not specifically requested to observe prior to its being covered, either Architect, Owner or Construction Manager may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate change order, be paid by the Construction Manager. If such Work is found to be not in accordance with the Contract Documents, the Contractor shall pay such costs.

Section 8.3. Defective Work.

(a) In case the nature of the defect of any particular portion of the Work is such that in the judgment of the Construction Manager, the Owner or the Architect, it is not expedient to have the Work corrected, ~~the Construction Manager shall have the right to deduct such sums of money from the amount due to the Contractor as constitutes a fair and reasonable remuneration for the difference in value of the Work as furnished from that as specified or for the damage to the completed Work.~~ 4.4.18

(b) Should any person or persons at any time assert a claim or institute any action, suit or proceeding against the Owner or Construction Manager involving the manner or sufficiency of the performance of the Work contemplated under this Contract, the Contractor will upon request of the Owner or Construction Manager promptly take over the defense of any such claim, action, suit or proceeding at the sole cost and expense of the Contractor and will also, to the greatest extent permitted by law, indemnify the Construction Manager and the Owner, all other Indemnitees and other persons and entities mentioned or referred to as Additional Insureds in Exhibit A hereof, and save all of them harmless from and against any and all liability, damages, judgments, costs or expense, including attorneys' fees and disbursements, arising out of or in connection with any such claim, action, suit or proceeding.

Section 8.4. Defective Work of Others.

Should the proper, workmanlike and accurate performance of any Work under this Contract depend in any way upon the proper, workmanlike or accurate performance of any work by another contractor on the Project, the Contractor agrees to use all means reasonably necessary to discover any defects in such other contractor's work, and to report the same, in writing to the Construction Manager and Owner before proceeding with its Work and shall allow to the Construction Manager a reasonable time to remedy such defect, it being the intention of the parties hereto that the entire work on the Project shall be properly performed in workmanlike manner. Before installation of any material, Contractor shall examine the material to which it is to be applied and shall notify the Construction Manager in writing of all defects which would affect the quality and appearance of the Work. ~~Proceeding with installation shall constitute acceptance of the existing conditions as meeting all requirements for a proper installation and acceptance of responsibility for all costs, expense and liability arising therefrom.~~ 4.4.18

A.S.

ARTICLE 9

CHANGES IN THE WORK AND GUARANTEED MAXIMUM PRICE

Section 9.1. Changes in the Work.

(a) With respect to any changes requested by the Owner, Architect and Construction Manager, the Contractor shall provide a detailed estimate of the cost and schedule impact of such change and shall not proceed with such changes until directed to do so in writing signed by the Construction Manager and as hereinafter provided. Proceeding with any proposed changes in the Work, additional Work or extra Work, without having first received, in hand, a written Change Order (for such Work) agreed to and executed by Construction Manager (for Construction Manager and on behalf of Owner), shall constitute waiver by Contractor to any claim for such Work and Contractor may be directed to remove or replace such changed work and repair any other work damaged by the installation or removal of such unauthorized changed work.

(b) The Contractor shall make no claim for changes in the Work, additional Work or extra Work unless the same shall be done in pursuance of a written order from the Construction Manager as hereinafter provided and notice of all such claims shall be made to the Construction Manager in writing within three (3) working days after the event giving rise to such claim, or such claim shall be considered as abandoned and constitute waiver of such claim by the Contractor.

(c) Bills for any changes in the Work, additional Work or extra Work shall be rendered at such time and in such form as directed by the Construction Manager. For the purpose of verifying such bills, and in order to make out a proper claim for same, the Contractor is required to produce any and all data and back-up documentation necessary for or as otherwise requested by Construction Manager to determine the correctness of the charges, all to the satisfaction of Construction Manager.

(d) In the event of reimbursable extra Work, changes in the Work or additional Work performed by the Contractor or any Sub-Contractor, the Contract Price shall be revised by one of the following methods as determined by the Construction Manager:

(i) by applicable Unit Prices stated in the Contract Documents;

(ii) by a mutually agreeable amount properly substantiated and itemized including a mark-up for such Work performed by Contractor's own forces, of no more than 5% profit and no more than 5% overhead. However, the Contractor's allowable mark-up for any such Work that is performed by the forces of Contractor's Sub-Contractors and/or material suppliers (of any tier) shall be no more than 5% in the aggregate (inclusive of both overhead and profit);

(iii) by payment of actual reasonable out-of-pocket costs determined on a time and material basis with a mark-up, inclusive of both overhead and profit, of no more than 5% in the aggregate, for the Contractor or any sub-Contractor and/or material suppliers performing the Work; or

(iv) by a mutually agreed to lump sum amount.

(e) The Contractor shall not be entitled to a mark-up upon a Sub-Contractor's extra work if such Sub-Contractor controls, is controlled by, under common control with, or otherwise affiliated with the Contractor.

(f) Contractor Proposals: The Contractor shall utilize all applicable unit prices when submitting proposals for extra, additional or changed Work and if there are no applicable unit prices Contractor shall use its best efforts in good faith to arrive at an agreeable lump sum amount and failing that shall use its best efforts in good faith to arrive at an agreeable upset price for such Work in the event such Work is performed on a time and material basis.

(g) When there is a dispute as to the value and/or existence of a change, addition, or extra Work, the Contractor shall be required to continue working on the disputed Work and shall be paid on a time and material basis as provided in this Section 9.1 if the Work is an extra, but shall not be entitled to any additional payment or increase in the Contract Price if the Work is determined to be a part of this Contract.

(h) When performing Work on a time and material basis, the Contractor, on a daily basis, shall furnish to the representative of the Construction Manager duplicate time sheets, material tickets and slips for other miscellaneous charges, retaining copies of each and securing the signature of the Construction Manager's representative on all time sheets, material tickets and slips for miscellaneous charges. Signed tickets only represent verification of work performed by the Contractor. Signed tickets are subject to all Contract requirements which requirements shall determine which work is extra work to the Contract. All signed documents shall accompany applications for payment.

(i) No field order or field proceed order (the "Order") with respect to this Contract shall be binding or enforceable against the Owner, Construction Manager or its agents unless such Order is issued upon the Construction Manager's official pre-printed field order form and signed by the Construction Manager and, in the event such Order exceeds the sum of \$10,000, by the Construction Manager and the Owner.

(j) In the event of changes in the Work which reduce the Scope of the Work hereunder, the Contract Price shall be reduced by an appropriate amount.

(k) Labor rates for all "time and material basis" work shall be calculated on the basis of actual direct labor cost. Indirect costs such as shop costs, trucking, etc. may not be factored into labor rates.

(l) All requests for Change Orders must be submitted to the Construction Manager within, and in no event later than ten (10) days from the date of the written request for a Change Order or such shorter time as may be required under the Prime Contract. The Contractor shall not proceed with any Change Order Work until the Work covered by the Change Order has been approved by the Construction Manager, for itself and on behalf of Owner, by way of a duly executed Change Order, as set forth under and in accordance with paragraph 9.1(a) above.

(m) Any and all Change Orders must be approved, in writing, and executed by the Construction Manager, on behalf of itself and Owner; any Change Orders not so approved and

executed will be considered as null and void, and will not be considered for payment, in whole or in part, under any circumstances.

(n) This Contractor will be fully responsible to report each and every Change Order to his Bond surety, and to obtain consent of the surety for performance of same, before proceeding with the Work contemplated by the Change Order. Failure of Contractor to obtain said consent of its surety will be considered a material breach of Contractor's obligations hereunder.

(o) Change Order Work shall be subject to the same retainage and other withholdings permitted under this Agreement or in the Prime Contract.

Section 9.2. Guaranteed Maximum Price.

(a) If the Owner has required the Construction Manager to construct the Project for a Guaranteed Maximum Price (the "GMP"), Contractor accepts the following terms, consistent with the GMP, and shall cooperate with Construction Manager in providing to Owner, Lender (if any), or Inspector, upon request of the Construction Manager:

- (i) a trade breakdown, accompanied by a list of qualifications, allowance, or alternatives, if any
- (ii) copies of all written Subcontracts and/or Proposals received from Contractor and its major suppliers and subcontractors for the work covered by the GMP; and
- (iii) copies of estimates for the work not covered by this Contract, but required to complete the Work, if applicable.

(b) In the event of any reduction to the Work required pursuant to the GMP, a reduction in insurance and/or bond premiums will be credited by this Contractor, as applicable.

ARTICLE 10

PAYMENTS

Section 10.1. Payments Generally.

(a) Based upon a complete and conforming application for payment (which shall consist of the documents and information set forth below, including Section 10.2(a) hereof, and in accordance with the Contract Documents), submitted to the Construction Manager by the Contractor, corresponding to applications for payment submitted by the Construction Manager to the Owner and Architect, and certificates for payment issued by the Owner or Architect, the Construction Manager shall make approved progress payments on account of the Contract Price to the Contractor as provided below and elsewhere in the Contract Documents. Contractor will receive the payments made by Construction Manager and Contractor will hold such payments as a trust fund to be applied first to the payment of any persons furnishing labor, materials or services for the Work; and the Contractor will so apply the payments received from Construction

Manager before using any part thereof for any other purpose. The Contractor shall, as often as requested by the Construction Manager, furnish an affidavit showing the names and addresses of all persons who shall have furnished labor, materials or services for the Work and the amount due or to become due to each such person.

(b) Payments may, in the discretion of the Construction Manager, be made in the form of checks payable jointly to Contractor and to Contractor's Sub-Contractor, supplier or vendor. If Contractor shall fail to pay promptly when due, for all labor, services, and materials furnished in connection with the performance of the Work, the Construction Manager may (but shall not be obligated to), after five (5) days' written notice to the Contractor, pay the amount of such liabilities by joint check or directly and recover the amount thereof from the Contractor, directly or by the application of any portion of this Contract Price then, or thereafter becoming due hereunder, and the Contractor will, at the request of the Construction Manager, provide affidavits from all persons furnishing labor, materials or services to the effect that they have been paid in full.

(c) No payment made under this Contract shall be evidence of performance of this Contract or approval or acceptance of the Work performed, either wholly or in part.

(d) Notwithstanding any provisions in this Trade Contract to the contrary, amounts held back by Construction Manager pursuant to the provisions hereof shall not be released, and progress payments (to the extent provided by law) as well as final payment shall not be made to Contractor unless and until the Work achieves Final Completion as verified by Architect, Owner and Construction Manager, and the Contractor and all Sub-Contractors and suppliers (as requested by Construction Manager) have duly executed and delivered to Construction Manager written releases of claims and of liens (which releases of lien may be a partial releases as provided by law) in a form required by Construction Manager which is acceptable to the Owner. Progress payments shall not be made hereunder unless the requisition therefor is accompanied by a waiver and release of liens for all work performed up to the last day of the next prior requisition for which payment has been made.

(e) Each application for payment by Contractor, which shall be made on forms provided by the Construction Manager, which shall be acceptable to the Owner, shall constitute a representation by Contractor that (i) the partial payment then requested to be disbursed has been incurred by Contractor on account of the Work, (ii) the materials, supplies and equipment for which such requisition is being submitted have been installed or incorporated in the Project or have been stored at the Project Site or at such off-Project Site storage locations as shall have been approved in writing by Construction Manager and Owner; provided, however, Owner and Construction Manager shall not be obligated hereby to pay or advance monies for materials stored off-site, unless, at Construction Manager's sole option and discretion, such is approved in advance and in writing by Construction Manager, (iii) the materials, supplies and equipment are insured in accordance with the provisions of this Contract, (iv) to the best of Contractor's knowledge, the materials, supplies and equipment are not subject to any liens or encumbrances, (v) to the best of Contractor's knowledge, no mechanic's, laborer's, vendor's, materialman's or other liens have been filed or threatened to be filed in connection with the Project or any of the materials, supplies or equipment incorporated therein or purchased in connection therewith, (vi) the Work which is the subject of such requisition has been performed in strict accordance with

the Contract Documents and all applicable Legal Requirements, and (vii) that the partial payment then requested to be disbursed, together with all sums previously disbursed under prior requisitions, does not exceed that portion of the Contract Price which is allocable to the portion of the Work actually completed up to the date of such requisition and that the remainder of the Contract Price (as the same may have been adjusted hereunder) will be sufficient to pay in full the costs necessary to perform and complete the Work. The Contractor shall execute a payment receipt, in a form provided by Construction Manager, which is acceptable to Owner, at the time of each payment when requested by Construction Manager.

(f) Except to the extent that the Construction Manager has received funds for payment to Contractor, which it has improperly not paid to Contractor, Contractor understands that it shall have a claim against Construction Manager for payment on account of the Contract Price for the Project or any other sums that may be due and payable hereunder, only to the extent that this Contractor has fully pursued its lien rights against the Project for which a claim of non-payment is made under the lien law of the State of New York, including a foreclosure action against same (the "Lien Action"), and then only to the extent that Contractor's ultimate recovery from the Owner, by virtue of the Lien Action, is less than the proper unpaid amount due this Contractor. The Contractor hereby expressly waives any and all claims with respect to any unpaid sums against Construction Manager under this Trade Contract, unless and until the Lien Action is fully completed. This waiver shall in no way impair Contractor's rights to perfect and foreclose its lien against the Project under the lien law of the State of New York, in the event that it does not receive payment otherwise due and owing to Contractor hereunder.

(g) The Construction Manager, Architect or Owner may decline to approve an application for payment, in whole or in part, or decline to make a payment or may disapprove a previously approved requisition for payment because of evidence of:

- (a) defective Work not remedied or disputed Work;
- (b) uninsured claims filed;
- (c) failure of Contractor to make payments to its Sub-Contractors or suppliers or employees properly due;
- (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (e) damage to the Work or other contractor's work for which damage Contractor is in any way or measure responsible or liable;
- (f) reasonable evidence that the Work will not be completed within the required completion time;
- (g) erroneous estimates by Contractor of value of Work performed;

- (h) safety violations by the Contractor or other violations of Legal Requirements;
- (i) other failures of the Contractor to perform in accordance with the Contract Documents;
- (j) failure to meet the requirements of Lender.

(h) The terms and conditions of this Trade Contract shall supersede the provisions of Article 35-E of the NYS General Business Law ("Article 35-E") to the fullest extent permitted by law, including the following terms: (a) the term "invoices" as used in Article 35-E shall be defined as an application for payment submitted by Contractor pursuant to Article 10 of this Trade Contract; and (b) the time for Construction Manager to review and approve or disapprove all or portion of Contractor's complete application for payment shall be not less than twelve business days following Construction Manager's receipt of Owner or Architect's approval or disapproval of all or a portion of Construction Manager's application for payment submitted to the Owner, to the extent it pertains to Contractor's application for payment.

Section 10.2. Progress Payments.

(a) Subject to the above and other provisions under this Article 10 and the Contract Documents, progress payments of the Contract Price shall be paid by the Construction Manager to the Contractor as follows:

(i) ~~Once each calendar month~~ ^{Every 2 weeks. 4-4-18 AA} on a date designated by the Construction Manager, the Contractor shall furnish to the Construction Manager for review, as a pre-condition to the disbursement of the progress payment next due and owing (as well as for any final payment), a complete application for payment including a written payment requisition on the forms annexed as Exhibit "C", together with supporting affidavits and waivers of liens provided by Contractor and its Sub-Contractor (all tiers) in form and substance satisfactory to the Construction Manager and the Owner, including Exhibits "F" and "G" for all Work erected in place by the Contractor up to the date of such application for payment.

(ii) If after completing their review process, the Architect, Construction Manager and Owner approve the application for payment (in whole or part), and approve all related Work done and all materials erected in place by the Contractor theretofore, and if the Architect, Construction Manager and Owner are satisfied that the Work still to be done and the materials still to be furnished by the Contractor can be completed within the Contract Price, the Construction Manager, upon receipt of the Architect's and Owner's approval of such application for payment or so much thereof as they may have found to be correct, shall pay to the Contractor subject to the provisions of Article 3.1, on or about the 30th day after such any part or the whole of the application for payment was approved, a sum equal to ninety percent (90%) (or such other amount set forth in Rider No. 1) of the amount of the application for payment that was so approved for payment. However, upon the partial or entire disapproval by Construction Manager of the Contractor's application for payment, the Construction Manager shall notify Contractor of such disapproval. Nevertheless, it is understood and agreed by the Parties hereto that under no circumstances shall any inaction, failure or delay on the part of Construction

Manager in providing such notice to Contractor of disapproval or approval of any part of an application for payment, ever establish or be argued to have established an account stated or ever be deemed an approval of any part of such application for payment, nor shall it ever constitute a waiver Construction Manager's right to later object to or disapprove any part of such application for payment.

(iii) At Construction Manager's discretion, and provided that Contractor's Work performed is in substantial compliance with the Plans and Specifications (as determined by Construction Manager), at the point at which fifty (50%) percent of the Contractor's Work required under the Trade Contract (including any additional or extra Work per duly executed change order or construction change directive, or as otherwise provided under the Contract Documents) is complete and approved, as verified by Construction Manager, Architect and Owner, then upon written request of the Contractor presenting documentation sufficient to establish the foregoing, the Construction Manager may, at its discretion, but need not elect to reduce the rate of retainage to be assessed against subsequent payments to a rate as low as zero (0%) percent, unless and except to the extent that Owner, in its sole discretion, determines or requires (or as set forth under the Prime Contract) that the original rate or another rate of retainage is required and should continue to be withheld from such subsequent payments. The above described retainage rate reduction, if elected by Construction Manager, is a forward-looking reduction in the "rate" of retainage to be assessed, and shall not under any circumstances constitute or require the release of any retainage or other withholdings already assessed or held by Construction Manager or Owner; likewise, it shall in no way impact or reduce the right to keep or assess other withholdings (other than retainage) as may be permitted under the Contract Documents. *Rate of retainage will be 10% to 5% to 2.5% based on completion.*

(iv) As directed by Construction Manager, the partial payments detailed herein above, shall be based upon a Trade Payment Breakdown or schedule of values furnished by the Contractor and approved by the Owner, Construction Manager and Lender. The Contractor shall submit to the Construction Manager for review and approval a schedule of values prior to submitting the Contractor's first application for payment. Each subsequent application for payment shall be based upon the most recent approved schedule of values submitted by the Subcontractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Price among the various portions of the Contractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager may require. This schedule, as and to the extent approved by Construction Manager, shall be used as a basis for reviewing the Contractor's applications for payment. *4.4.18 Ad*

Section 10.3. Final Payments.

(a) The final payment shall be made by the Construction Manager to the Contractor as follows:

(i) After the Work under this Contract, including all punch list Work, has been completely and properly performed, and all as-built drawings, warranty and other documents required under this Trade Contract have been submitted by the Contractor and all of the foregoing has been reviewed and accepted by the Construction Manager, the Contractor shall notify the Construction Manager, the Owner and the Architect thereof and submit for review its

requisition for Final Payment. Thereafter the Construction Manager, the Owner and the Architect shall review all Work done by the Contractor and if the Construction Manager, Owner and Architect are satisfied that this Contract and all Work (including approved change order Work and Work directed to proceed) has been completely and properly performed, and upon confirmation that a Temporary Certificate of Occupancy has been issued for each and every part of the entire Project, including the full building certificate of occupancy, and provided that the Construction Manager has received all required and compliant executed waivers of mechanics' liens and all required and compliant executed partial and final general releases, from the Contractor and each of its Sub-Contractors, together with good and sufficient evidence that the premises are free from all liens and claims chargeable to the said Contractor or in connection with its Work, and upon receipt from the Owner of the funds necessary to make payment of the balance owing, then Contractor shall be deemed to have achieved "Final Completion" and shall be paid the contract balance then due and owing ("Final Payment"). If at any time there be any lien or claim for which, if established, the Construction Manager, Owner or the said premises may be made liable and which would be chargeable to the Contractor (or any of its Sub-Contractors), the Construction Manager shall have the right to retain or withhold out of any payment then due or thereafter to become due an amount sufficient, in the judgment of Construction Manager, to completely indemnify, defend and otherwise protect the Owner, Lender and Construction Manager against any and all costs and expenses arising out of such lien or claim until the same shall be effectively satisfied, discharged or canceled and should there prove to be any such lien or claim after all payments are made, the Contractor shall pay to the Construction Manager or Owner all monies that the Owner or Construction Manager may be compelled to pay in discharging any such lien or claim.

Section 10.4. Fixed Price.

(a) The Contract Price shall not be increased or decreased on account of any changes in costs of any materials or labor and/or on account of changes in the law, regulations, ordinances, rules or regulations, or on account of existing taxes, or any taxes which may be imposed hereafter by Federal, State or City Governments at any time while this Trade Contract, or the Work or obligations set forth under this Trade Contract (including but not limited to obligations of indemnity, insurance and warranty) is in effect.

(b) Contractor acknowledges and understands that the Work of this Project is located and performed in a climate that seasonally experiences winter weather conditions, including significant snow, ice, wind and temperatures well below freezing, and that Contractor has calculated its price and time schedule accordingly to accommodate for same, and shall not make a claim for adjustment to Contract Time or the Contract Price on account of such conditions, except that in the event of and to the extent that an Unusually Extreme Weather Condition results in an impact to the critical path of the Work, Contractor may claim and upon Construction Manager's approval, receive an appropriate extension of Contract Time, which shall be Contractor's sole remedy for same. An "Unusually Extreme Weather Condition" is defined as a weather condition actually experienced and documented during a work day that renders all Work (including out of sequence Work that could have been done to mitigate the effect on the schedule) incapable of being performed during that time (for a period of more than 4 hours of the normal work day) and is of such unusual severity and duration that reference to the 10 year

historical weather data shows its equivalent has not been experienced during that same time of year (within a range of 30 days) and in the same location where the Project is located.

Section 10.5. Title, Liens and Claims.

Title to all Work, including, without limitation, materials and equipment, shall pass to the Owner upon incorporation of the Work, materials and equipment into the Project or upon payment therefor, whichever shall first occur. Contractor warrants and agrees that all materials and equipment incorporated by it in the Project and all materials and equipment delivered by it at the Site for incorporation in the Project shall be free of any and all liens, claims, chattel mortgages, security interests, encumbrances and conditional sales agreements in favor of Contractor, or any of its Sub-Contractors, suppliers, or other persons or entities, of all tiers. Contractor further agrees that any monies it shall receive in payment for Work performed under this Contract shall be received in trust and used to discharge its financial obligations with respect to the Work. To the fullest extent permitted by law: Contractor further agrees that it will not file or cause to be filed any mechanic's lien for materials or equipment furnished or to be furnished and/or for labor performed or to be performed unless default shall first have been made by the Construction Manager in making a payment under this Contract and ten (10) days prior written notice of such default shall have been given to Construction Manager. Contractor further agrees that if any Sub-Contractor or any materialman or anyone claiming by or through such Sub-Contractor or materialman shall file or cause to be filed any lien, the Contractor will, upon notice from the Construction Manager, cause such lien to be canceled and discharged within ten days from such notice; and in the event of the Contractor's failure to do so, the Construction Manager or Owner shall have the right to cause such lien to be canceled and discharged by bonding or otherwise and in that event any expense so incurred by the Construction Manager or Owner, including the premiums upon any bond furnished for such cancellation and discharge and reasonable attorneys' fees and disbursements, shall be paid by the Contractor or at the option of the Construction Manager shall be deducted from any payment then due or thereafter becoming due from the Construction Manager to the Contractor. In the event of any breach by the Contractor of any of the terms of this Section the Construction Manager shall have the option to terminate this Trade Contract for cause. Said right shall be cumulative and shall be in addition to any and all other rights and remedies herein or otherwise by law given to the Construction Manager. Upon receipt of evidence of Contractor's default hereunder with respect to its obligations to make payments to its Sub-Contractors and suppliers, the Construction Manager reserves the right to, after five (5) business days prior written notice, withhold from any money due the Contractor and pay directly for labor, materials, equipment, tools, plant, facilities, services and all other obligations of the Contractor and to deduct the amount of any such direct payments from any payments or amounts then due or thereafter to become due to the Contractor.

ARTICLE 11

SAFETY AND PROTECTION OF PERSONS AND PROPERTY

Section 11.1. Protection of Persons and Property.

(a) The Contractor shall comply with all applicable terms and conditions of the Project Safety Program, attached hereto as Exhibit D, as same may be amended from time to time.

(b) The Contractor shall protect its Work and materials by standard industry methods so that same will not be marred by the work or workers of other trades during installation and until final acceptance of the Work. Contractor shall have full responsibility to install, protect and maintain all materials in proper condition and forthwith repair, replace and make good any damage thereto until final acceptance of the Work hereunder. The Contractor shall also temporarily protect any permanently installed work that may be damaged during installation of Contractor's Work hereunder. The Construction Manager and Owner will not in any manner be answerable or accountable for any loss or damage that shall or may happen to the Work or any part or parts thereof respectively or for any of the materials or other things used and employed in finishing and completing the Work, or for injury to any person or persons, either workers or the public, or for damage to property.

(c) Contractor further agrees that it will, during the performance of the Work, take proper precautions to prevent injury or damages to persons or property, including without limitation providing, erecting and maintaining all reasonable, necessary or required safety devices for its employees and flagmen, erecting proper barricades and other safeguards around its Work and posting danger signs and other warning devices where warranted by the nature of the existing condition of the Work. In any event, the Contractor shall promptly and properly maintain, repair and replace, as necessary, any safety devices provided by others or the Contractor and which are disturbed by the Contractor's operations or forces hereunder. If this Contractor removes any temporary protection installed by others, including but not limited to protection around shafts, at the building perimeter, floors, walls, penetrations, etc., this Contractor shall provide the proper manpower and materials to continually safely guard the protected areas in accordance with the specifications, local regulations, Project Safety and Health Program and Contractor's Project Safety and Health Requirements, as defined in Exhibit D and all governmental agencies having jurisdiction until the removed temporary protection is properly reinstalled by this Contractor. Failure to guard areas where protection was removed or failure to properly and timely replace such protection will result in this Contractor being charged for the cost of the replacement by others, and Contractor shall indemnify to the greatest extent permitted by law and shall defend and hold harmless, the Construction Manager, Owner, Architect and all other Indemnitees set forth under the Trade Contract Agreement, from and against any Claims (as defined under the Trade Contract Agreement) that may arise therefrom or in connection therewith. To ensure quality control, this Contractor is aware that any temporary openings required for subsequent installation of this Contractor's Work must be brought to the attention of the Construction Manager prior to completion of the pertinent work in the area of the opening needed. Failure to request access will result in this Contractor assuming responsibility and being

charged for all costs involved in the subsequent modifications required to the building to accommodate its Work.

(d) Contractor shall take all necessary steps to protect and secure its Work, materials, tools, scaffolding, equipment, buildings, trailers and work shacks from vandalism, theft and fire damage and the Owner and the Construction Manager shall not be responsible for losses or damages to such items.

(e) Contractor assumes the risk of loss or damage direct or indirect of whatever nature to the Work or to any materials and equipment furnished, used, installed or received by Owner or Construction Manager, materialmen or workmen in preparation for and in performing services or furnishing materials and equipment for the Work. The Contractor shall bear such risk of loss or damage until final acceptance of the Work by the Owner hereunder or until completion or removal of such materials from the site whichever event occurs last. Notwithstanding the status of any actual or potential recovery or claim under any insurance policy, in the event of any loss or damage to the Work, Contractor shall immediately repair, replace or make good any such loss or damage.

(f) Contractor shall be responsible for compliance with all Federal, State and local safety, traffic, highway, fire, health and environmental protection laws, rules and regulations including, but not limited to, the Construction Safety Act of 1969, The Williams-Steiger Occupational Safety and Health Act of 1970, Local Municipal Rules and Regulations, all as amended from time to time, and all standards, rules and regulations which have been or shall be promulgated by the parties or agencies which administer the aforesaid laws. The Contractor, at its sole cost and expense, shall indemnify and hold harmless the Owner, all other persons and entities mentioned or referred to as additional insureds in Exhibit A hereof, the Construction Manager and the Architect and its consultants from and against any and all costs, expenses and liabilities incurred by the aforesaid parties including, but not limited to, fines, penalties, attorneys' fees and expenses, work stoppages and corrective measures that may result from acts of commission or omission by the Contractor, its Sub-Contractors, consultants, materialmen, agents, employees, and assigns in failing to comply with the aforesaid laws, rules and regulations or the other safety requirements set forth herein. ~~The amount of such costs, expenses and liabilities shall be charged to this Contractor's account.~~ 4.4.18 AJ

(g) Contractor shall be responsible for initiating, maintaining and supervising safety precautions and programs in connection with the performance of its Work hereunder. The Contractor shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to: (i) all Contractor's employees on the Project and all other persons on or near the Project Site who may be affected by the Contractor's operations; (ii) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off-site, under the care, custody or control of the Contractor or any of the Contractor's Sub-Contractors; (iii) ~~other property at the Site or adjacent thereto;~~ and (iv) the Work of the Construction Manager or other separate Sub-Contractors. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel and in accordance with all applicable Legal Requirements. Contractor shall

properly remedy all damage or loss to any property referred to herein caused in whole or in part by the Contractor, any of its Sub-Contractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and for which the Contractor is responsible hereunder except damage or loss attributable to the acts or omissions of the Construction Manager, the Architect, the Owner or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable and not attributable to the fault or negligence of the Contractor. The foregoing obligation is in addition to the Contractor's indemnification obligations set forth elsewhere herein, and shall likewise survive termination of this Trade Contract.

(h) The Contractor shall designate a responsible member of the Contractor's organization at the Site (the "Contractor's Project Safety Representative") whose duties shall be the prevention of accidents, enforcement of all Federal, State and City safety and health related laws, rules, regulations, orders and codes, compliance with the Contractor's Site Safety Program and the Project Safety Program and who shall further be responsible for monitoring the Contractor's compliance with the site safety requirements of the Department of Buildings of the City of New York. This person, unless notified otherwise by the Contractor, shall be the Contractor's most senior supervisor at the Site.

(i) The Contractor shall not load or permit any part of the Work or the Project to be loaded so as to endanger its safety. The Project is designed to support the loads of the finished Project only. No provision is included for stresses or loads imposed by construction operations.

(j) In an emergency affecting the safety of persons or property the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss.

(k) Contractor shall be responsible for seeing that its suppliers and Sub-Contractors of all tiers comply with the requirements of this Article 11.

(l) The Construction Manager reserves the right to assess penalties against the Contractor in the event of its failure to comply with the requirements of this Article 11 or the documents or matters referred to herein, including, but not limited to, those contained in Exhibit M.

(m) The Contractor shall immediately notify Construction Manager's personnel on Site as designated, of any accident resulting in bodily injury to its employees or other persons or damage to any property regardless of cause or extent of bodily injury or damage to property. Contractor shall upon initial notification of any accidents, additionally and promptly furnish to Construction Manager a copy of the "Supervisor's Accident Report" and a copy of the "Employees First Report of Injury" or its equivalent.

ARTICLE 12

INDEMNITY AND INSURANCE REQUIREMENTS

Section 12.1. Insurance Requirements.

(a) Contractor agrees to carry insurance, which shall be primary to all other insurance, for its own account and all additional insureds as listed in Exhibit A herein as well as the Construction Manager, Noble Construction Group, LLC, the Owner, and the Architect (excluding Architect's professional activities) (collectively, "Additional Insureds" each an "Additional Insured"), of sufficient amount to cover any loss or damage that may arise on account of injuries or death happening to its employees, or to any other person, or to any property caused by or in connection with the operations of the Contractor under this Trade Contract, but in any event with the minimum limits of liability set forth in Section 12.1(e) hereinafter. All deductibles, penalties, premiums or self-insured retention on any policies of insurance required to be supplied by the Contractor, including but not limited to commercial general liability automobile and excess, shall be the sole responsibility of the Contractor, and no deductible or self-insured retention shall exceed \$10,000 without Construction Manager's prior written approval.

(b) Contractor shall not commence Work under this Trade Contract until it has obtained all of the insurance referred to herein and such insurance has been approved by the Owner and Construction Manager, nor shall the Contractor allow any Sub-Contractor to commence Work on its Contract until the insurance required of the Contractor herein has been so obtained and approved.

(c) Contractor further agrees to deliver to the Construction Manager, for itself and all of its Sub-Contractors, (Attention: Risk Management) before commencing any Work hereunder a Certificate of Insurance and Declarations Sheets issued or endorsed by the insurance company issuing the policy, as proof of purchase, in a form satisfactory to the Construction Manager, showing the name of the insurance company, the date of expiration of the policies, the various endorsements and coverages required herein, the Additional Insureds required herein, and the limits of liability thereunder, and which endorsement shall recite that thirty (30) days prior written notice will be sent by registered or certified mail, return receipt requested or by a nationally recognized overnight courier service to the Construction Manager (Attention: Risk Management) and Owner should such policies be canceled or changed during their term.

(d) Upon commencement of Work the Contractor shall furnish to Construction Manager (Attention: Risk Management) within thirty (30) days of the execution of this Trade Contract, an executed endorsement to the comprehensive general liability insurance policy (the "Endorsement") (form attached hereto), evidencing that the Owner, Construction Manager and the parties listed on Exhibit A are additional insureds.

(e) All insurance required to be maintained must be procured from insurance companies with a current A.M. Best rating of A- or better, that is authorized to do business in the State where the Project is located and approved by Construction Manager and Owner.

(f) The kinds of insurance and limits of liability required of the Contractor shall be those set forth in Exhibit A hereto.

(g) If the comprehensive general liability insurance policy is renewed at any time that this Trade Contract is in effect, the Contractor shall furnish to Construction Manager, within thirty (30) days of the commencement of each renewal period, a copy of the Endorsement evidencing such renewal and that the Owner, Construction Manager and the parties listed on Exhibit A are additional insureds.

(h) Compliance with the foregoing requirements with respect to insurance shall not relieve the Contractor from any liability under the indemnity provisions of this Trade Contract.

(i) At any time that this Trade Contract is in effect, if the identity of the general liability insurance carrier changes, the Contractor is to provide written notification to Construction Manager within thirty (30) days of the change, and provide a copy of the Endorsement in accordance with (a) above.

(j) If the Construction Manager and Owner consent to any sub-subcontracting, each Sub-Contractor shall be required to:

- (i) comply with the requirements of this Article 12;
- (ii) maintain the same forms of liability insurance referred to above; and
- (iii) shall include in its Sub-Contract the indemnification provisions as set forth in Section 12.2 of this Article indemnifying the Indemnitees under this Contract and those who in order of relationship are prior to the one to whom the Sub-Contract is issued.

(k) The Owner will purchase and maintain a standard Builder's Risk Insurance Policy in a completed value form, which will cover the construction to be performed under the Contract. The Builder's Risk Insurance Policy will cover all material and equipment that is to be or may be a permanent part of the completed Project, from the time such equipment is delivered to the Project Site. The Contractor is responsible for insuring such materials and equipment at all other times. The Builder's Risk Insurance policy will not cover the Contractor's temporary structures, or its materials, supplies, tools or equipment, or any other property not destined to become a permanent part of the completed Project, whether owned or rented, or Contractor's materials and equipment while stored at off Project Site storage location or while in transit to the Project Site, and the Contractor shall be solely responsible for such items and shall make Construction Manager and Owner additional insureds and loss payee in connection with any material stored at the off-site location by the Contractor, especially if such material has been pre-paid. Contractor shall be responsible for the payment of up to fifty percent (50%) of the full deductible for each and every Builder's Risk loss for which that Subcontractor is at fault. Contractor agrees to hold Owner and Construction Manager harmless from any such loss, theft, or disappearance of tools or equipment, except to the extent the same is caused by the Owner or others for which the

Owner has responsibility (including Design Team, Other Contractors and Unit Purchasers) or Construction Manager.

Section 12.2. Indemnity Requirements.

(a) As used in this Trade Contract, "Indemnitees" shall mean and include: the Construction Manager, the Owner, the Architect and the Owner's Lender and all other persons and entities mentioned or referred to as Additional Insureds in Exhibit A hereof, and the directors, officers, partners, subsidiaries, consultants, agents, assigns and employees of each of them (all of which are the "Indemnitees", each an "Indemnitee").

(b) To the fullest extent permitted by law, the Contractor hereby agrees to and shall at its own cost and expense, indemnify, defend and save harmless the Indemnitees from and against any and all claims, losses, damages, liquidated damages, causes of action, judgments, liens, encumbrances, penalties, fines, suits, proceedings, causes of action, demands, costs and expenses (including attorney's fees and disbursements) of whatsoever kind or nature, including but in no way limited to, those involving bodily injury or death to employees of Contractor or its Sub-Contractor (any tier), or bodily injury or death to any other person(s), personal or advertising injury, infringement of any patent right, any breach of or other failure to properly perform the work and other obligations and responsibilities under and in compliance with this Trade Contract and the Contract Documents, and also including any and all damage, destruction and/or loss of use of real property or other tangible property, including the work itself (all collectively, "Claims") that in any way or measure are caused by, arise out of or in connection with the Work or any act or omission of Contractor, Sub-Contractor (any tier), or any employee (whether directly or indirectly employed), agent, assign, consultant, materialman or supplier of any of them, or anyone for whom any of them may be liable or responsible. The Contractor's duty and obligation to defend and to save harmless all Indemnitees from and against any and all Claims in accordance with Section 12.2 hereof is in addition to and independent of the duty to indemnify under Section 12.2.

(c) Nothing stated under Section 12.2 hereof shall require the Contractor to indemnify an Indemnitee for that portion of a Claim that is adjudged to be directly and solely caused by that Indemnitee's own active negligence, it being understood that under such circumstances, the Contractor shall owe such an Indemnitee only partial indemnity, indemnifying such Indemnitee for that portion of the Claim that was not adjudged to be directly and solely caused by that Indemnitee's own active negligence, but Contractor shall nevertheless owe full indemnity obligations to all other Indemnitees for such Claim. The indemnity obligations set forth under Section 12.2 hereof shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist in favor of any Indemnitee hereunder.

(d) The foregoing indemnity obligations shall include, without limitation, bodily injury and death of any employee of the Contractor, Sub-Contractor (any tier), and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any applicable workers compensation, disability benefits or other similar employee benefits acts. Contractor further agrees that so much of the monies due under or to become due under this Contract as may be considered necessary by the Construction Manager

may be retained by the Construction Manager until all such suits, claims, actions or proceedings for damages as aforesaid shall have been settled or determined, unless Contractor presents evidence satisfactory to the Construction Manager that Contractor has provided a defense and indemnity for and on behalf of Construction Manager and all other additional insureds as listed on Contractor's policy for its work at the Project, and shall also have provided proof of adequate insurance for same covering the Construction Manager and the other Indemnitees as additional insureds.

(e) Contractor acknowledges and agrees that all indemnity obligations under this Trade Contract are intended to be and shall be enforced and construed, at all times, so as to provide to the Indemnitees with the greatest amount of protection and indemnity permitted under the law.

(f) The duties to indemnify, defend and hold harmless set forth herein shall continue and survive in full force and effect beyond termination or completion of this Trade Contract.

ARTICLE 13

SHOP DRAWINGS AND SAMPLES

Section 13.1. General Requirements.

(a) The Contractor shall review, approve and submit through the Construction Manager PROMPTLY IN ACCORDANCE WITH AGREED SCHEDULES FOR SUBMISSIONS AND IN SUCH SEQUENCE AS TO CAUSE NO DELAY IN THE WORK of the Contractor, the Construction Manager or of any separate trade Contractor, all Shop Drawings, Coordination Drawings, Product Data and Samples required by the Contract Documents at its sole cost and expense. No extensions of time will be granted because of failure to have Shop Drawings, Product Data and Samples submitted in ample time to allow for processing.

(b) By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that it has determined and verified all materials, field measurements, and field construction criteria related thereto and that it has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents and with the requirements of other sections or trades related thereto as may be required for the proper and complete installation of the Work.

(c) The Construction Manager will forward Shop Drawings, Product Data and Samples to the Architect. If the Construction Manager finds them not to be complete or in proper form, it may return them to the Contractor for immediate correction or completion and Contractor hereby agrees to immediately correct or complete same, as the case may be, and resubmit same to the Construction Manager. Any delays resulting from such incomplete or incorrect submissions shall be the responsibility of the Contractor and such submissions shall only be deemed submitted for purposes of satisfying Contractor's obligations hereunder with respect thereto when they are submitted in correct, complete and proper form.

(d) The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Construction Manager's forwarding Shop Drawings, Product Data or Samples to the Architect, or by the Architect's approval thereof unless the Contractor has given written notice thereof to the Architect and Construction Manager at the time of submission and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Construction Manager's forwarding of same materials to the Architect or the Architect's approval thereof.

(e) The Contractor shall direct specific attention, in a manner satisfactory to the Architect, on all resubmitted Shop Drawings, Product Data or Samples, to any and all revisions and shall highlight, in particular, in a manner satisfactory to the Architect, any revision other than those requested by the Architect or Construction Manager.

(f) No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved in writing by the Architect. All such portions of the Work shall be performed strictly in accordance with approved submittals.

(g) The Contractor shall prepare composite Shop Drawings and installation layouts, when required, to depict proposed solutions for tight field conditions. These composite Shop Drawings and field installation layouts shall be coordinated in the field by the Contractor and its Sub-Contractors for proper relationship to the work of all other trades, based on field conditions.

(h) The Architect will review Shop Drawings, Product Data and Samples with reasonable promptness and will return them to the Contractor with the Architect's stamp applied thereto. Notations by the Architect which increase Contract cost or time of completion shall be brought to the Architect's and Construction Manager's attention before proceeding with the Work.

(i) The Contractor shall furnish detailed Shop Drawings and Coordination Drawings or other design drawings for the Work to the Construction Manager for the approval by the Architect prior to their use in the Work and shall process and return ("turn around") coordination drawings within 48 hours after receipt. Approval of any design drawing or manufacturer's drawing by the Architect shall not relieve Contractor of any responsibility for (i) execution of the Work in strict accordance with the requirements of the Contract Documents or (ii) the manner in which the Work performs when completed.

(j) The Architect shall furnish to the Contractor from time to time such further drawings or explanations as may be necessary to detail and illustrate the Work, and the Contractor shall conform to the same as part of this Contract without additional cost. All Shop Drawings, Submittals, Samples and Product Data are and will remain the property of the Owner. Contractor shall exercise the utmost diligence to obtain in a timely manner all drawings and other information necessary to fulfill the Work, and if at any time drawings or information has not been furnished which are necessary for the completion of the Work, the Contractor shall, from time to time and at frequent intervals, inform the Construction Manager in writing as to

what drawings or information may still be required to complete the Work within the time hereinafter specified and the sequence in which such drawings or other information shall be required.

Section 13.2. Shop Drawing Requirements.

(a) General Requirements: Shop Drawings shall show design, materials (kind, thickness and finish), dimensions, assembly, attachments, connections, and other details necessary to insure that they accurately interpret Contract Drawings and Specifications and also show adjoining work in such detail as required to provide proper connection with same. Shop Drawings shall be numbered consecutively and insofar as possible shall be uniform in size.

(b) Identification: All Shop Drawings shall be identified with the name of the Project, building or buildings for which the Shop Drawings are being submitted. The Architect's name and Project Number, Owner's name, Construction Manager's name, date of submittal, drawing number, revision number and date of each revision, if any, as well as the Specification Section under which the work is to be performed and the Drawing and detail numbers that relate to the Shop Drawings shall be identified on all Shop Drawings.

(c) Transmittals: All Shop Drawings, cuts and brochures shall be accompanied by a letter of transmittal from the Contractor setting forth the same identification as required above. Contractor shall number transmittals consecutively and shall indicate the Submittal Procedure number being followed. Transmittal shall also indicate if Shop Drawing is resubmitted and note Architect's file number for original submittal.

(d) Submittal Procedures: The Contractor shall submit copies of Shop Drawings in accordance with Submittal Procedures and in copies as set forth in Rider 1, or as to be determined by the Construction Manager or as set forth in the Specifications.

(e) Architect's Distribution & Stamp: Following the Architect's review of each Shop Drawing submission, the Architect and/or his Consultants will retain one black and white print each, and return the reviewed reproducible print and one black and white print to the Construction Manager with the Architect's stamp and signature affixed thereto, annotated as follows:

(1) "APPROVED" means approved for construction, fabrication and/or manufacture subject to the provision that the Work shall be in accordance with the requirements of the Contract Documents. Final acceptance of the Work shall be contingent upon such compliance.

(2) "APPROVED AS NOTED" means, unless otherwise noted on the drawings, approved for construction, fabrication and/or manufacture subject to the provision that the Work shall be carried out in compliance with all annotations and/or corrections indicated on the reproducible print and in accordance with the requirements of the Contract Documents. Final acceptance of the Work shall be contingent upon such compliance. If also marked "RESUBMIT", the Contractor

may proceed with construction, fabrication and/or manufacture under the same conditions as stated above, however, the Contractor must submit the shop drawing with required revisions and corrections to certify that all notes and annotations are being complied with as specified.

(3) “DISAPPROVED” means that major deviations from the requirements of the Contract Documents exist in the submittal. No work based on such drawings shall be constructed, fabricated or manufactured. Contractor shall revise the drawing in compliance with Architect’s annotations and pursuant to all requirements of the Contract Documents and shall resubmit the drawings to Architect for approval (with a copy to Construction Manager).

(f) Contractor’s Distribution: The Contractor shall obtain and provide such number of prints of the transparency as determined by the Contractor for his field distribution. Contractor shall have copies of all Shop Drawings at the Project Site at all times and shall make them available to the Architect’s representatives. Shop Drawings marked “DISAPPROVED” shall not be kept at the Project Site.

(g) Cost of Submittal and Distribution: All charges in connection with the delivery of Shop Drawings to the Construction Manager’s office or where directed by the Construction Manager shall be paid by the Contractor.

Section 13.3 Sample Requirements.

(a) General Requirements: Where possible, all samples required for a particular Specification Section shall be submitted together. Contractor shall furnish, for the approval of the Architect, all such samples as he may require from time to time and all workmanship, materials, and equipment furnished hereunder shall be in strict accordance with said approved samples. Samples shall be submitted from the same source which will supply the actual job. Samples shall be of adequate size to show quality, type, color, range, finish, texture and other specified characteristics. Samples of materials or products which are normally furnished in containers or packages, which bear descriptive labels and/or application or installation instructions, shall be submitted with such labels and/or instructions.

(b) Identification: All samples shall be labeled, tagged or otherwise clearly identified. Labels or tags shall set forth the name of the Project, building or buildings for which the Sample is being submitted, Architect, Construction Manager, Contractor and/or supplier, the name of the manufacturers, fabricator, or processor, the trade designation, grade and quality of the material or product, the date of submittal, and specific identification of each sample and a precise reference to the Specification Section, Article and Paragraph wherein the material, product, or element of the Work is specified. Each label or tag shall have sufficient clear space to permit the application of the review stamps of the Construction Manager and the Architect.

(c) Transmittals: All Samples shall be accompanied by a letter of transmittal from the Contractor setting forth the same identification information as required above. Contractor shall number transmittals consecutively in sequence with the Shop Drawing transmittals. Where

appropriate, test data and/or manufacturers' certificates shall be referenced in and forwarded with the letter of transmittal. Samples without accompanying certificates or test data will be returned without action.

(d) Submittal Procedure: The Contractor shall submit the number of samples as directed by the Construction Manager.

(e) Architect's Distribution & Stamp: Following the Architect's review of each Sample submission, the Architect will return two of each set of samples to the Construction Manager with the Architect's stamp and signature affixed thereto and annotated in a manner similar to Shop Drawings.

(f) Contractor's Distribution: When Samples are returned, the Contractor shall retain such Samples in a suitable place at the Project Site for use by the Contractor, his Sub-Contractors, the Architect and his authorized representatives to insure that all Work is being installed in accordance with approved Samples. The remaining approved Samples will be retained by the Architect. Samples marked "DISAPPROVED" shall not be kept at the Site.

(g) Cost of Submittal and Distribution: All charges in connection with the delivery of Samples to the Construction Manager's office or where directed by the Construction Manager shall be paid by the Contractor.

ARTICLE 14

SUBCONTRACTING AND ASSIGNMENTS

Section 14.1. Assignment or Subletting.

(a) The Contractor shall not sublet, assign or transfer this Trade Contract or any part thereof or any interest therein or contract any part of the Work called for by this Trade Contract or permit the further sub-subcontracting of any part thereof without prior written approval of the Construction Manager and Owner. The Contractor shall not subcontract any portion of the Work to any proposed Sub-Contractor to whom either Owner or Construction Manager has an objection. Every such subcontract (any tier) shall require the Sub-Contractor to be bound by and to comply with all the Contract Documents and Contractor shall cause its Sub-Contractors to comply with all the Contract Documents. Notwithstanding the fact that the Construction Manager and the Owner may approve a Sub-Contractor hereunder, such approval shall in no way be construed as creating any Contractual relationship between the Construction Manager or the Owner, and any such Sub-Contractor nor shall it relieve the Contractor of its obligations for the performance of the work covered by such subcontract. Any assignment by the Contractor, including but not limited to the assignment of its right to receive payment under this contract, without the express written consent of the Construction Manager shall be deemed null and void, and any cost or expense incurred by Owner or Construction Manager as a result of such unauthorized assignment shall be the responsibility of and paid for by the Contractor.

(b) The Contractor shall be responsible for the acts, omissions, work, materials and equipment of the Contractor's employees, Sub-Contractors and suppliers and their consultants, agents and employees and any other persons directly or indirectly employed by any of them.

(c) Neither the Owner nor the Construction Manager shall have any obligation to pay or to see that payment of any monies is made to any Sub-Contractor except as may otherwise be required by applicable law. The foregoing shall not, however, prevent the Owner or the Construction Manager from making payment to a Sub-Contractor or supplier of the Contractor pursuant to the provisions hereof.

(d) The Contractor hereby agrees to include the following provision in every agreement and/or purchase order relating to the purchase by the Contractor of materials, merchandise, goods or products to be installed and made a part of the improvement of premises hereunder:

“(i) The supplier expressly agrees that the Owner shall be a third-party beneficiary of all of the obligations of the supplier hereunder, including without limitation, the beneficiary of all warranties, expressed or implied, which the supplier makes hereunder relating to materials, equipment, goods, merchandise or products (“Materials”) to be sold hereunder by the supplier. Nothing herein shall be construed to make this an agreement between the Owner and the supplier except to the extent provided in the immediately preceding sentence and the supplier acknowledges that it has no Contractual rights, expressed or implied, that it can assert against the Owner.

(ii) Without limiting in any manner any obligations of the supplier with respect to the quality of the Materials, the supplier expressly warrants and agrees that the Materials to be furnished hereunder shall be merchantable and shall be fit for the purpose for which such Materials are purchased.”

(e) The Contractor agrees to include in each subcontract for any work hereunder a requirement that such Sub-Contractor include in every agreement and/or purchase order relating to the purchase of materials, equipment, merchandise, goods or products to be installed hereunder language similar to that set forth in paragraphs d(i) and d(ii) above.

(f) Construction Manager shall have the right to assign to Owner or the Lender this Agreement and Construction Manager's rights thereunder, at Owner's request, without penalty or the consent of the Contractor, and without thereby assuming any of the obligations of Construction Manager under the Subcontract prior to the date of such assignment. Contractor shall enter into similar agreements with Sub-subcontractors and each tier thereunder.

ARTICLE 15

DEFAULT AND TERMINATION

Section 15.1. Construction Manager's Right to Stop the Work and Perform the Work in the Event Of Default

(a) In the event of Contractor's default hereunder by its failure to perform any task required hereunder, upon forty-eight (48) hours prior written notice to the Contractor, and without prejudice to any other remedy the Construction Manager may have, the Construction Manager may but shall not be obligated to perform or cause to be performed such task and charge the Contractor all cost and expenses incurred by the Construction Manager or Owner or Architect in connection therewith; except that no prior notice shall be required in the event of an emergency, or where the performance of such task is necessary in order to prevent injury or damage to persons or property including the Work or Project itself, it being understood that no such action or inaction by Construction Manager shall in any way relieve Contractor for sole liability of such task or any claims or damages arising out of the failure to properly and timely perform that task. In such case, an appropriate change order shall be issued deducting from the payment then or thereafter due to the Contractor all cost and expense incurred by the Construction Manager or Owner or Architect in correcting such deficiencies, including compensation for the Architect and its consultants and the Owner's other consultants for additional services made necessary by such default, neglect or failure. If the payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Construction Manager.

(b) If the Contractor fails to correct defective Work as required elsewhere hereunder or persistently fails to carry out the Work in accordance with the Contract Documents, the Construction Manager, by a written order signed by the Construction Manager or its agent, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Construction Manager to stop the Work shall not give rise to any duty on the part of the Construction Manager or its agents to exercise this right for the benefit of the Contractor or any other person or entity.

Section 15.2. Failure to Perform and Termination for Cause.

Should the Contractor be adjudged bankrupt, or make a general assignment for the benefit of creditors, or should a petition under the Bankruptcy Act or under any other act relating to insolvency be filed by or against the Contractor, or should a receiver be appointed on account of its insolvency, or should Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or of materials of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence or fail in the performance of any of the obligations on its part herein contained, the Construction Manager may, if the Contractor fails to cure such default within three (3) calendar days after receipt of written notice from the Construction Manager, in addition to any other rights provided hereunder or otherwise by law, stop the Work and/or discontinue the employment of the Contractor hereunder and cause the Work to be performed and completed and deduct the cost thereof from any money due or thereafter to become due to the Contractor for the said Work, and enter upon the premises and

take possession of all materials, tools and equipment of every kind whatsoever thereon, and employ any other person or persons to finish the Work and provide the materials therefor; and in case of discontinuance of the employment of the Contractor, Contractor shall not be entitled to receive any further payment under this Contract and, if the expenses incurred by the Construction Manager in finishing the Work shall exceed the unpaid balance of the amount to be paid under this Contract, the Contractor shall pay the difference to the Construction Manager. Upon the discontinuance of the Contractor's employment hereunder, Construction Manager may engage Contractor's Sub-Contractors and suppliers to complete the Work.

Section 15.3. Termination For Convenience.

The Construction Manager or Owner may, upon five (5) calendar days prior written notice, terminate the employment of the Contractor at any time and for any reason or for no reason, even if the Contractor is not in default hereunder. In such event, the Construction Manager shall pay to or for the account of the Contractor on account of the Work properly performed prior to the effective date of such termination: (1) all actual costs approved by the Construction Manager as having been paid or incurred by the Contractor in connection with performance of the Work; (2) all costs incurred with the Construction Manager's prior written approval in settling or discharging commitments entered into in good faith by the Contractor in connection with performance of the Work; and, (3) a reasonable amount to cover equipment retained and demobilization costs; provided that the workmanship, materials and equipment for which payment is to be made as aforesaid are in accordance with the requirements of this Contract. There shall be deducted from the amount determined above, all payments previously made and all amounts which the Construction Manager is entitled to charge the Contractor under this Contract. In no event shall the amount to be paid to or for the account of the Contractor pursuant to this Section plus all amounts previously paid the Contractor under this Trade Contract, exceed the Contract Price (as same may be adjusted in accordance herewith).

Section 15.4. Termination of Construction Manager Under Prime Contract.

This Agreement, or a portion of the Work under this Agreement, shall be assignable by Construction Manager to Owner (or, in Owner's discretion, Owner's Lender or a new construction manager) upon seven (7) calendar days' written notice provided such assignee has sufficient funds to complete the Project.

Section 15.5.

Should the Construction Manager take action to effectuate termination under the provisions of this Article 15, and should it subsequently be determined that such termination or attempted termination effectuated by Construction Manager was improper or otherwise wrongful, then such termination shall be automatically deemed and treated as if it had been and is a termination for convenience in accordance with Section 15.3, and the Parties shall proceed in accordance with the terms of and provisions set forth in this Trade Contract governing same.

ARTICLE 16

WARRANTIES AND GUARANTEE

Section 16.1.

The Contractor warrants to the Construction Manager, Owner and the Architect that all materials and equipment furnished under this Contract will be new unless otherwise specified and that all Work will be of first-class quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to those requirements, including substitutions not properly approved and authorized, may be considered defective at the discretion of the Construction Manager, Architect or Owner. If required by the Construction Manager, Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment supplied hereunder. This warranty is not limited by the provisions of Section 16.2.

Section 16.2.

(a) If, within one year after the date of Substantial Completion or such longer period required by the Prime Contract, or issuance of all temporary certificates of occupancy for the Project or designated portion thereof, whichever shall occur last, or within one (1) year after acceptance by the Construction Manager of designated equipment, or within such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, whichever shall be the longer, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Construction Manager to do so (unless the Construction Manager has previously given the Contractor a written acceptance of such particular defective or improper workmanship or material), and the Contractor will further repair any Work or damages as a result of said defective or improper workmanship or material, or damage in connection with the repair of same. This obligation shall survive both final payment for the Work or designated portion thereof and termination of the Contract.

(b) The warranties and guarantees provided under the Contract Documents shall be for the benefit of and enforceable by the Construction Manager and the Owner of the Project and its successors and assigns.

(c) The Contractor shall obtain and deliver to Construction Manager any specific warranties given by its Sub-Contractors or suppliers which shall expressly provide that they are for the benefit of and enforceable by the Owner, Construction Manager as well as Contractor. The Contractor also agrees to furnish Construction Manager with all operating manuals for all equipment.

(d) If the Owner or Construction Manager shall perform or arrange for the performance of corrective work required to be performed by Contractor but which Contractor has failed or refused to perform, upon due notice, the Contractor's warranties and guarantee hereunder shall not be affected in any manner, and Contractor hereby expressly waives all claims

that its warranties or guarantee were impaired due to the corrective work performed by, or at the direction of, the Owner or Construction Manager.

(e) The warranties and guarantee provided for in the Contract Documents are in addition to and not a limitation of any rights the Construction Manager or Owner may have under the terms of the Contract Documents, including without limitation breach of Contract or as otherwise provided by law.

ARTICLE 17

CONSTRUCTION MANAGER'S RIGHT TO PERFORM WORK AND AWARD SEPARATE CONTRACTS

Section 17.1. Construction Manager's Right to Perform Work and Award Separate Contracts.

The Construction Manager reserves the right to perform Work related to the Project with the Construction Manager's own forces and to award separate Contracts in connection with other portions of the Project or other work on the Site under these or similar conditions whether or not similar to the type of work called for under this Trade Contract.

ARTICLE 18

ADDITIONAL PROVISIONS

Section 18.1. Notices.

All notices hereunder shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, or sent by a nationally recognized overnight courier service, addressed as follows:

To the Construction Manager:

Noble Construction Group LLC
1 Harmon Plaza- #1004
Secaucus, New Jersey 07094
Attn: Edward Geerlof and David S. Goldstein, Esq.

To the Owner:

70 Schermerhorn Owner LLC
c/o Lonicera Partners
31 Smith Street
Brooklyn, New York 11201
Attn: Mr. John Evans

with copies to:

Pepper Hamilton LLP
The New York Times Building
620 Eighth Avenue – 37th Floor
New York, New York 10018
Attn: Ira M. Schulman, Esq.

To the Architect: At address set forth above

To the Contractor: At address set forth above

or to such other address as may be designated in writing by either party to the others in accordance with the provisions of this paragraph. All notices shall be deemed to have been given when sent except that notice of change of address shall be deemed to have been given when received.

Section 18.2. Signs, Confidentially, and Media Communications

The Contractor further agrees not to display on or about the premises any sign, trademark or other advertisement, and to remove everything of an advertising nature when so directed by the Construction Manager or Owner. Contractor shall treat all information relating to the project and all information supplied to it by Construction Manager, Owner, Architect or any other person or entity as confidential and proprietary information and shall not permit its release to other parties or make any public announcement or publicity releases without written permission from Owner, Architect or Construction Manager. Contractor shall also require all Sub-Contractors (any tier) and vendors to comply with this requirement.

Section 18.3. Binding Effect.

This Trade Contract shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and permitted assigns.

Section 18.4. Dispute Procedures, Governing Law, Jurisdiction and Venue.

Except where and to the limited extent that any of the following terms or conditions are in direct conflict with terms or conditions under the Prime Contract that would otherwise be applicable hereto, in which case those terms and conditions of the Prime Contract shall govern, the following terms and conditions shall apply over to this Agreement and any dispute arising out of this Agreement or between the Parties:

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York. All disputes arising under this Agreement shall be resolved by a court of competent jurisdiction in the State of New York located in the City and County of New York. Further, the Construction Manager and the Contractor hereby: (i) irrevocably consent, for themselves and their legal representatives, partners, successors and assigns, to the jurisdiction and venue of the courts of the State and County of New York, and of the United States District

Court for the Southern District of New York for all purposes in connection with any action or proceeding which arises from or relates to this Trade Contract.

(b) In any dispute arising out of or from this Trade Contract or the termination thereof, to the fullest extent allowed by law, the parties, their successors and assigns hereby waive all rights to a trial by jury.

(c) The Contractor agrees to participate in, join in, and be bound by any proceeding, be it Judicial, Administrative, Arbitration or other, which directly or indirectly relates to this Contract or Project and for which the Construction Manager demands, by written notice that Contractor participate.

(d) With respect to claims by the Contractor: except to the extent lesser time periods or more limited claim requirements are provided for elsewhere herein and/or under the Prime Contract, in which case the more restrictive conditions shall apply, it is understood and agreed that any claim or action by the Contractor must be commenced within two years of the date the cause of action accrued, but in no event later than one year after substantial performance of this Trade Contract.

(e) If any claim or dispute arises relating to this Contract, the Contractor shall immediately make all of its books and records available to the Construction Manager for review and audit.

Section 18.5. Severability.

If any provision of the Contract Documents, including this Trade Contract, is found to be invalid or unenforceable as against any person or party, the remainder of such provision and the Contract Documents, including this Trade Contract, and the applicability of such provision to other persons or parties shall not be affected thereby. Each provision of the Contract Documents shall, except as otherwise herein provided, be valid and enforceable to the fullest extent permitted by law.

Section 18.6. Rights and Remedies.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available under applicable law.

Section 18.7. No Waiver.

No action or failure to act by the Construction Manager, the Architect or the Owner shall constitute a waiver of any right or duty afforded any of them under the Trade Contract or Contract Documents, nor shall any action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed to in writing.

Section 18.8 Third-Party Beneficiary.

The Contractor expressly agrees that the Owner shall be a third-party beneficiary of all of the obligations of Contractor hereunder, including without limitation, the beneficiary of all warranties, expressed or implied relating to labor, materials, equipment, goods, merchandise or products to be provided by Contractor. Nothing herein shall be construed to make this an agreement between the Owner and the Contractor except to the extent provided in the immediately preceding sentence and Contractor acknowledges that it has no contractual rights, expressed or implied, that it can assert against the Owner.

Section 18.8. Survival.

The obligations of the Contractor hereunder, including without limitation obligations concerning indemnity, warranties, discharge of liens and defense of Construction Manager and Owner in connection therewith, shall survive the expiration or earlier termination of this agreement.

Section 18.9. Cooperation with Lender.

Contractor shall cooperate and shall cause its Sub-Contractors to cooperate, with any financial institution that provides construction or permanent financing for the Project as well as any consultant employed by any such Lender (herein collectively called the "Lender"). Without limiting the generality of the foregoing, Contractor shall supply or cause to be supplied all information and documentation requested by Construction Manager or Owner to comply with the requirements of Lender in the form, if any, required by Lender. Upon Construction Manager's or Owner's request, Contractor shall execute and deliver an amendment to this Contract to reflect Contractor's obligations with respect to the construction or permanent financing after such financing has been arranged, including Contractor's agreement to perform its obligations hereunder for benefit of Lender if Owner defaults under the construction loan.

Section 18.10. Entire Agreement.

This Contract contains the entire understanding between the parties and supersedes any agreements, statements, commitments, or proposals heretofore had between the parties and may not be changed orally.

Section 18.11. Captions.

Captions and titles of the different Articles and Sections are solely for the purpose of aiding in the location of materials in this Contract and are not to be considered under any circumstances as parts, provisions or interpretations of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Construction Manager:

Noble Construction Group, LLC

By: _____

Name: _____

Date: _____

Contractor:

County-Wide Masonry Corp.

By: Anthony Deasmo

Name: Anthony Deasmo

Date: 4.4.18